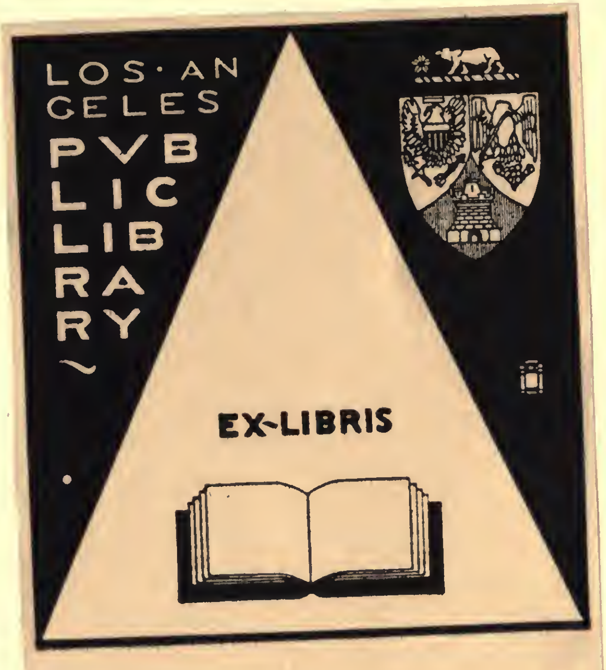

R 353.9747 N565 v.7

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## STATE OF NEW YORK

# MESSAGES FROM THE GOVERNORS

COMPRISING

Executive Communications to the Legislature and Other
Papers Relating to Legislation from the Organization
of the First Colonial Assembly in 1683 to
and Including the Year 1906

WITH NOTES

EDITED BY CHARLES Z. LINCOLN

PUBLISHED BY AUTHORITY OF THE STATE

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## VOLUME VII

1877–1884

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# PREFACE.

The constitutional amendments of 1874 extended the term of the governor from two years to three years. The first election under this amendment was held in 1876, when Governor Robinson was chosen. He was followed by Governor Cornell, who was succeeded by Governor Cleveland, who served through the years 1883 and 1884, but resigned on the 6th of January, 1885, because of his election to the office of President of the United States. The volume includes eight years.

During this period the constitutional amendments of 1876 relative to the administration of prisons and canals were put into operation, canal tolls were abolished, a civil service law was enacted, provision was made for disposing of the lateral canals, the Legislature and the other State departments occupied the new capitol, and the old capitol was demolished.

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Lucius Robinson

# MESSAGES FROM THE GOVERNOR.

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## 1877. JANUARY 2. LEGISLATURE, ONE HUNDREDTH SESSION.

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### LUCIUS ROBINSON, Governor.

## ANNUAL MESSAGE.

STATE OF NEW YORK:

Executive Chamber,
*January* 2, 1877.

To the Legislature.—At the commencement of my service as chief magistrate of the State, it is gratifying to find the legislative representatives of the people assembled in their respective chambers and ready to unite with me in such measures as the welfare of our constituents may demand. In entering upon our duties it becomes us to acknowledge our dependence upon the Supreme Power which controls the destinies of States and nations, and which has so often interposed for our deliverance from danger, and humbly to implore a continuance of its guidance and protection.

We ought also at all times to remember that we are not here to promote our own individual interests. The people have not chosen us and sent us to their Capitol for any such purpose. On the contrary, they have placed in our hands a great and sacred trust, to be administered for their benefit and for the interest and honor of the inhabitants of the whole State, without regard to locality, religious creed or political party. The money which they pay into the public treasury is not our money; nor is it the money of the State, except as the people are the State. It still belongs to them until it is paid out by their agents for the legitimate expenses of their government as provided by the Constitution and laws. If a single dollar be otherwise appropriated or paid, it will be a breach of trust for which there can be no justification or excuse. Let us keep these principles constantly before us as we proceed with our respective duties.

### FINANCES.

The accounts of the financial affairs of the State are kept with thirteen different funds, counting the several canal funds as one. The details of the accounts will be found in the Comptroller's report. The following statement exhibits the financial condition of the State at the close of the fiscal year, as it would be if all the funds were condensed into one:

| | |
|---|---|
| Aggregate balance in the treasury of all the funds, October 1, 1875 | $8,126,778.98 |
| Aggregate receipts during the fiscal year ending September 30, 1876 | 18,623,986.29 |
| Total | $26,750,765.27 |
| Deduct payments during the year | 17,827,711.49 |
| Balance in the treasury September 30, 1876 | $8,923,053.78 |

A large proportion of the above balance in the treasury consists of money in the various sinking funds.

| | |
|---|---|
| The amount of receipts into the treasury on account of the General Fund revenue during the year ending September 30, 1876, was | $11,646,517.63 |
| The payments, including the deficiency of $733,863.77 on the 1st of October, 1875, and also $4,640,849, transferred to the Bounty Debt Sinking Fund, were | 11,644,982.98 |
| Balance September 30, 1876 | $1,534.65 |

The balance, although small, is more satisfactory than the large deficits which have almost uniformly appeared for many years past.

## DEBT.

On the 30th of September, 1875, the total funded debt was $28,328,686.40, classified as follows:

| | |
|---|---|
| General Fund | $3,119,526.40 |
| Contingent | 68,000.00 |
| Canal | 10,086,660.00 |
| Bounty | 15,054,500.00 |
| | $28,328,686.40 |

On the 30th of September, 1876, the total funded debt was $23,315,898.58, classified as follows:

| | |
|---|---|
| General Fund | $3,092,238.58 |
| Contingent | 5,000.00 |
| Canal | 10,081,660.00 |
| Bounty | 10,137,000.00 |
| | $23,315,898.58 |

| | |
|---|---|
| Actual reduction of the debt during the year by cancellation | $5,012,787.82 |
| Aggregate amount of debt | $23,315,898.58 |
| Deduct money and securities in the sinking funds | 14,191,889.50 |
| Total amount of debt after applying sinking funds | $9,124,009.08 |

The bounty debt will mature on the seventh day of April next. The sinking fund, together with the one-third mill tax, now in course of collection, will be sufficient for its full payment.

The balances in the sinking funds on the 30th September, 1876, including money and securities, were as follows:

| | |
|---|---|
| General Fund | $2,910,529.36 |
| Canal | 2,121,050.24 |
| Bounty | 9,160,309.90 |
| Total | $14,191,889.50 |

It must be observed, however, that the amount in the General Fund Debt Sinking Fund cannot all be applied to the payment of that debt, without leaving a large deficiency of means for paying the current expenses of the government. The full amount required for the payment of the debt was contributed from the surplus revenues of the canals, as directed by the Constitution,[a] the last contribution having been received in 1873. But instead of being applied to that object, it was used to pay other appropriations made by the Legislature, and not otherwise provided for, and has never been fully restored. The debt therefore remains uncanceled, and, if ever paid, it must, to a large extent, be paid by taxation. The whole of it — except $800,000, due in 1878, and $30,443.76 due on demand — is payable at pleasure, and is held by the State as an investment for the various trust funds. In this condition it will of course remain, the interest upon it being paid to the respective funds for which it is held, so long as the Legislature may choose to leave it in that shape. It would be more satisfactory, and in better accord with the Constitution, to have the whole debt extinguished, and the money belonging to the trust funds invested in other securities. It is believed that the $800,000 due in 1878 may be paid from the sinking fund without taxation.

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[a] Const. 1846, art. 7, § 2.

## CANALS.

The report of the Auditor of the Canal Department exhibits in detail the operations, revenues, debts and expenses of all the canals. It will be unnecessary to present here anything more than a few of the leading and important facts.

The gross amount of income from tolls and other sources for the year ending 30th September, 1876, was $1,487,332.89, being $438,662.74 less than in the preceding year. The cost of collection, ordinary repairs and other charges on revenues amounted to $1,149,194.61, being $318,121.34 less than in the preceding year. The Erie canal produced a surplus of revenue over expenses amounting to $508,953.14. The other canals all show small incomes and large deficiencies of revenue as follows:

| | Gross income. | Deficiencies. |
|---|---:|---:|
| Champlain | $94,944.55 | $83,667.51 |
| Oswego | 29,048.35 | 27,175.17 |
| Cayuga and Seneca | 11,083.99 | 14,312.34 |
| Chemung | 2,104.84 | 7,689.87 |
| Chenango | 3,717.38 | 4,602.03 |
| Black River | 11,339.28 | 23,734.85 |
| Genesee Valley | 14,668.50 | 8,595.60 |
| Crooked Lake | 30.48 | 1,562.41 |

The year has been one of unprecedented disaster to the boatmen and to all others engaged in the navigation of the canals. In addition to the great depression in every branch of business, there has been an extraordinary competition between the railway lines extending from the Western States to tidewater, which has diverted trade from the canals, and notwithstanding the very low rates of toll, there has been a large falling off in tonnage as well as revenues. Many boats have been laid up; others have been run at a heavy loss and none of them appear to have made any profits.

The effective measures of reform which have been enforced within the last two years, arresting mismanagement and fraud and reducing expenses, have saved the canals from total ruin. Small as the income is, the expenses have been reduced below it, and yet the canals have been kept in complete repair during the entire season. Their future success, if they are to have any, must depend upon a faithful perseverance in this policy.

The question of high or low tolls in the present condition and prospects of canal transportation is one about which there would seem to be no ground for any difference of opinion. Under the Constitution, as now amended, no more money can be expended on the canals in any one year than the gross amount of their revenues for the preceding year.[b] It is, therefore, indispensable for the forwarders to pay such tolls as are required to keep the canals in running order; and no one can reasonably ask them to pay any more, when they are making losses instead of profits on every cargo which they carry. It is true the Constitution requires the canal debt to be provided for from the surplus canal revenues,[c] but no law can enforce impossibilities.

It is to be hoped that the depression in trade will not be of long continuance, and that prosperity may soon return to the canals. It is believed that the railways cannot continue permanently their unreasonable competition without involving themselves in ruin. When such a change shall take place that forwarders can again realize a fair income from their business, they will, of course, be required to pay such tolls as will provide for the canal debt. Until that time it must inevitably be a charge upon the taxpayers of the State. With the usual amount of freight, at fair prices, the present rates of toll will doubtless be sufficient for all purposes, and with continued economy in expenses, they may probably be still further reduced. Since the close of navigation the railway companies have agreed upon an increase of freights; but the past history of such agreements leaves it uncertain whether this one will be of long duration.

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[b] Const. 1846, art. 7, § 6, am. 1874.

[c] Const. 1846, art. 7, §§ 1, 3, am. 1854.

It is perhaps unnecessary to add that any expenditures, under present circumstances, for enlargements or extraordinary repairs, should not receive encouragement from any source.

Those who have suffered most severely by the loss of business upon the canals are the boatmen, and although it may not be in the power of the Legislature to relieve them, it is impossible to withhold from them our sympathy. The number of their boats is about 6,000. They are in one sense partners of the State. They do the work which produces the revenue to keep the canals in repair. Their labor is severe, and their exposure great. In many instances their families live upon the boats, in order to reduce their expenses to the lowest point. No part of the plunder which others have received has ever gone to them; on the contrary, they have suffered from it by paying tolls which have been misapplied. But with all their labor and economy they have been unable during the past season to pay expenses. If any relief can be extended to them in the present depressed condition of trade, it must come from a further saving in the cost of maintaining the canals, and a consequent further reduction in tolls. Even this will not probably be sufficient to carry them safely through another season of such competition as they have encountered during the last year.[1]

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[1] The Legislature adopted concurrent resolutions, authorizing the Canal Board to reduce the tolls on various stable products not exceeding fifty per cent. below the rates established for 1876. Boats were also to be exempted from the payment of tolls. Another resolution concurred with the Canal Board in the abolition or imposition of nominal tolls on a large number of articles not included in the former resolution.

## THE LATERAL CANALS.

Whether any further appropriations should be made on account of such lateral canals as the Legislature has the right to dispose of, can be best determined after receiving the report of the commissioners appointed by an act of the last session, to examine that subject. It will be seen by the results of the year's business given above, that those canals are rapidly disposing of themselves, and have already become of little value, even to the people living near them.

I learn from the commissioners that they have made the inspection and examination required by the act appointing them, and will soon be prepared to report. The act fixed their compensation, and directed its payment, together with their expenses, but made no appropriation, and they have not been paid. The necessary appropriation should be made.[2]

## STATE PRISONS.

The State prisons have kept on their way from bad to worse. The number of convicts in the three prisons September 30, 1876, was as follows:

| | |
|---|---|
| Auburn | 1,281 |
| Clinton | 623 |
| Sing Sing | 1,605 |
| Total | 3,509 |

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[2] The report of the commission on lateral canals was presented to the Assembly on the 19th of January, 1877. [See Assembly Document No. 30.] The commission recommended the sale or other disposition of the Chenango, Chemung, Crooked Lake and Genesee Valley canals, with some delay for the accommodation of pending business, for which the canals would be needed, and also with the exception that certain portions of the Chenango canal might profitably be used as a feeder for the Erie canal. The commission recommended the retention of the Black River canal as a part of the canal system of the State.

The excess of advances from the treasury over receipts from earnings was $704,379.85. This deficiency is larger by more than $100,000 than was ever before known. It is due to the present Inspectors to state that they claim the increased deficiency to be largely owing to incumbrances which fell upon them from their predecessors.

A commission was appointed by an act of the Legislature of 1876 to make a thorough investigation of the affairs of the prisons. The commissioners have been actively engaged in the service during the whole summer and autumn. Their report will very soon be submitted to the Legislature, and will, I presume, cover the whole ground of prison management, discipline, and maintenance. I commend it to the attention of the Legislature without further comment at this time.[3]

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Chapter 404, approved June 4, provided for the abandoment and discontinuance of the four first named canals at the times and in the manner stated in the act.

Chapter 17, passed February 14, appropriated $10,000 for the compensation and expenses of the commission.

[3] The commission presented its report to the Legislature on the 16th of January, 1877. [See Senate Document No. 49.] The report covered several aspects of prison administration, pointed out numerous defects, and called attention to many evils, but in view of an entire change of administration as a result of the Constitutional amendment of 1876, providing for the appointment of a Superintendent of State Prisons, the commission made only a few recommendations. These included the erection of a wall round Sing Sing and Dannemora prisons, the closing of all public highways on prison grounds, the establishment of a separate prison for female convicts, the enactment of a new prison code, and also the appointment of a State agent to look after the interests of discharged convicts, and aid them in finding employment.

Chapter 24, passed February 17, prescribed the salary of the new Superintendent of State Prisons, and regulated to some extent the details of the department. The act provided that " no appointments shall be made in any of the prisons of this State on grounds of political partisanship." Chapter 107, passed April 11, contained further provisions relative to the administration of the department, including convict labor, which might be employed under contract or by the State, or by both methods in the discretion of the superintendent.

Chapter 172, passed April 24, authorized the Superintendent of State

## STATE REFORMATORY AT ELMIRA.

It is gratifying to be able to announce to the Legislature that a large portion of the Reformatory building has been finished and brought into use. With a reasonable appropriation, the entire structure will be completed within the present year. The board of managers, appointed by chapter 207, Laws of 1876, organized in accordance with the act, and succeeded in securing the services of a very competent and efficient superintendent. Having completed and furnished the south wing, they received 170 convicts from the Auburn and Sing Sing prisons, who were immediately put at work upon the north wing, the prison wall and workshops, which have been advanced rapidly towards completion. The superintendent estimates that with an appropriation of $185,000, and with the privilege of using the prisoners without the interference of contractors, he can fully complete and furnish and bring into use all the buildings, including the prison wall, within the year, and support 300 convicts during the progress of the work, and that then, with possibly a small appropriation for maintenance in 1878, the Reformatory will cease to be a burden upon the State treasury. He is confident that it can be made entirely self-sustaining.

In 1874, the Governor in his annual message estimated the whole cost of the buildings at $2,000,000. Assuming the above estimate of the superintendent to be correct, they will be completed for a little more than one-half of that sum. But for the ambitious style of architecture adopted at the outset, the cost would have been much less than $1,000,000.

The design of the Reformatory was the reformation, as

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Prisons to transfer female convicts from Sing Sing to one or more of the penitentiaries as he might designate, and women subsequently convicted were to be sent to the penitentiary in the judicial district where they resided.

Chapter 424, approved June 6, provided for the appointment of a State agent for the guidance and employment of discharged convicts.

well as punishment, of young convicts who had not become hardened in crime. With this object in view it was originally enacted that no convicts should be sentenced to it except such as were over sixteen and under thirty years of age, and convicted of a first offense. It is a source of much regret to the friends of the institution that it should have been, even temporarily, diverted from its original purpose; but the crowded condition of the other prisons, and the necessity of relieving them as far and as speedily as possible, led to the use, for the time being, of the Reformatory for that purpose.

The managers will require some further legislation to aid them in the discharge of their duties, and to promote the objects of the institution. Their views and recommendations will in due time be laid before you.[4]

## CONSTITUTIONAL AMENDMENTS.

The people of the State, at the last election, adopted, by an immense majority, the constitutional amendments which had been approved by two previous Legislatures, and which have thus become a part of the Constitution of the State.[d] They provide for the appointment, by the Governor and Senate, of a Superintendent of State Prisons, with all the powers of the Board of Inspectors, and a Superintendent of Public Works, with all the powers of the Canal Commissioners. A radical change is thus made in the management both of the prisons and of the canals. In each case all power and responsibility are placed in the hands of one controlling executive officer.

Wearied with the frauds, the wasteful and extravagant expenditures which so often attend the management of irresponsible boards, the people have determined to make this great change, with the hope of better results. They undoubtedly desire that the amendments be carried into effect as speedily as possible. I recommend, therefore, that an act be passed with as little delay as may be proper, fixing the salaries of the respective Superintendents, and also the amount of security to be given by each.

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[4] Commitments to the Elmira Reformatory were regulated by chapter 173, passed April 24, and sentences were required to be general without any limit as to the period of confinement. The act also prescribed the details relative to the employment, parole and discharge of prisoners.

The supply bill, chapter 275, appropriated $185,000 for the Reformatory.

[d] Const. 1846, art. 5, §§ 3, 4, am. 1876.

A brief act containing these simple provisions will be all that will be necessary before appointing the Superintendents, and enabling them to enter upon their important duties. If further legislation should then be found desirable, either in regard to the canals or the prisons, it could be perfected at the convenience of the Legislature, and with ample time for deliberation.[5]

## PUBLIC BUILDINGS.

One phase of the extravagance and folly, amounting almost to lunacy, caused by an inflated currency and inflated modes of life, developed itself in a passion for costly public buildings. Of these the New Capitol takes the lead. Its cost was originally estimated at $4,500,000. There have already been expended upon it over $7,500,000, and it will undoubtedly require as much more to complete it; and when completed it will be a vast pile of ornamental stone work, not at all in keeping with the tastes and good sense of plain, substantial people. In addition to this, it is discouraging to contemplate its completion in view of the enormous annual cost of heating, lighting, cleaning and superintending it.

Following in the wake of the Capitol are several insane asylums, the State Reformatory, houses for normal schools, high schools and other buildings upon which millions of the people's money have been wasted in useless ornaments and luxurious arrangements. In behalf of those which are not yet completed — embracing nearly all of the most costly structures — the usual representation is made that unless we go forward and spend the further amounts required for their completion, we shall lose all that we have expended. Whatever force there may be in this argument, I confess that in the present condition of financial affairs, the actual distress caused in many homes by the payment of their heavy taxes, I should prefer to have the expenditures cease, the taxpayers relieved and the buildings left as they are, at least until the advent of better times. Fully responding to the demands of humanity in behalf of the unfortunate poor, I cannot see the propriety or the justice of reducing a large body of taxpayers to pauperism for the purpose of building gorgeous palaces in which other paupers are to be supported at the public expense.[6]

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[5] Chapter 85, passed March 30, fixed the salary of the superintendent of public works, prescribed the security to be given by him, and contained provisions relative to the organization of the department. [See veto message of March 26.]

## STATE BOARD OF HEALTH.

Several medical gentlemen of great eminence in their profession have asked my attention to the subject of a State board of health. They believe that such an institution would render essential service in the prevention of sickness and the preservation of life and health. They claim that, in almost every case where local epidemics have prevailed with a severity and fatality which seemed mysterious, their origin can be traced to some neglect of sanitary precautions or to some cause which a properly organized board of health would have discovered and removed. Important as this subject is, it has been impossible for me to find time for such an examination of it as would justify any specific recommendations. I can only ask your careful consideration of it. I do this the more willingly because I am assured that it is not intended that any expense shall be incurred by the State beyond a moderate salary for the secretary of the proposed board.*

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[6] See veto of items in supply bill, May 16, including an item of $1,000,000 for the New Capitol. Subsequently chapter 336, was passed May 25, which appropriated $500,000 for the New Capitol.

## COMMISSIONERS OF EMIGRATION.

The condition of the affairs of the Commission of Emigration is embarrassing, and demands prompt consideration. The commission is charged with the duty of watching over all emigrants landed in the city of New York, on their arrival; and, in the cases of any who fall into distress, for some years afterwards.

Heretofore, under authority of the laws of this State, bonds have been required with conditions to indemnify the cities, counties and towns of the State against these passengers becoming a public charge upon them. The practice has been to accept, in lieu of the bond, a certain sum in cash from each passenger, which money constituted the revenue or fund of the commission, out of which it has reimbursed the several counties for any expenditures made in support of distressed emigrants within the period named. This revenue is now entirely cut off by a decision of the Supreme Court of the United States, declaring all such laws unconstitutional.• The decision was rendered on the 21st of March, 1876, since which date no commutations have been paid, nor bonds given.

Out of the moneys heretofore collected by the Commissioners of Emigration, as agents of the State, the public faith is pledged to provide for all emigrants — in behalf of whom contributions to the fund were made — who may need assistance within five years from the date of their arrival.

There are 120 acres of land on Ward's island upon which were erected hospitals, a refuge, an asylum for insane persons and other buildings, for the use of the commission. The lands were bought and the buildings erected out of the commutation moneys. The title to the property is in the State. The commission estimate its value at $2,000,000. It is subject to a mortgage of $200,000.

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* A State Board of Health was established by L. 1880, chap. 322.

• Henderson v. Wickham, 92 U. S. 259.

The Legislature last year, on the recommendation of the Governor, appropriated $200,000 toward the current expenses from May 1, 1876, to May 1, 1877. Of this there had been expended, up to the third of November last, $109,000.

I learn by a communication from the president of the commission, dated December 13, 1876, that the number of passengers from foreign ports landed at New York from January 1, 1876, to the above mentioned date, was 109,592. That of these the number which came under the immediate care of the board was 72,326. The number admitted during the same period to the refuge and hospital was 3,953, of which number 687 remained in the institutions — 331 being sick in the hospital, 141 insane in the lunatic asylum, 162 crippled or otherwise disabled in the refuge, and fifty-three children in the nursery.

It seems necessary that some provision be made by which the public faith may be kept with the emigrants — at least until the relief which is sought through a bill pending in Congress is obtained. The importance of the question as to how we are to deal with emigrants is shown by the fact that out of a little more than 8,000,000 reported as arriving since May, 1847, nearly 6,000,000 were landed at New York. Further details will be found in the annual report of the commission.[7]

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[7] Chapter 275 appropriated $150,000 for the expenses of the commissioners of emigration for the year beginning May 1, 1877.

## SAVINGS BANKS.

Recent disasters among our savings banks admonish us of the necessity of rigid restraints against mismanagement. These institutions are created for a special purpose, to wit, to take charge of small savings; the savings of those who handle little money, are inexperienced in investments, and to whom the loss of any part of their limited capital is a serious calamity. Everything practicable should be done toward absolute security, and the money deposited by this class of persons should never be mixed up with that of others who handle large sums, and are capable of taking care of it for themselves, nor should it be subjected to the risks which persons of greater means and large experience are accustomed to take.

I recommend a re-examination of the general law passed in 1875 regulating these institutions. Section 34 of that act provides, that for the purpose of ascertaining the surplus held by a savings bank, its interest paying stocks and bonds shall be estimated at their market value. I suggest instead, that such investments shall not be estimated above cost, nor above par, nor above market value. Any advance in cost is unrealized profit until the stocks are sold; and it may never be realized. If a premium above par has been paid, or is indicated by the current market value, this is sure to disappear if the stocks or bonds are held till maturity; it should not be counted as an asset, except when the bonds have been sold before maturity, and the premium is actually in hand.[8]

I suggest, also, that the privilege, granted by section 27, of leaving ten per cent of the aggregate deposits, and also the current cash daily balances, of savings banks, with an ordinary bank or trust company should be taken away.

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[8] The Governor's suggestion was embodied in chapter 256, passed May 10, which amended the savings bank act of 1875, chapter 371, including section 34 relative to the method of ascertaining the value of the surplus held by savings banks.

This is mingling the money of the poor with that of the more speculative and more watchful classes, and subjecting it to the same risks. It is inconsistent with the provision of section 30, which forbids a savings bank lending any part of its funds upon notes, bills of exchange, drafts, or any other personal securities whatever. For such is the very class of securities on which the ordinary business bank will risk the money of the savings bank, in common with that of its other customers. It is, no doubt, desirable that a certain portion of the means of a savings bank should be in such shape that it can be promptly realized; sufficient provision to this end is otherwise made by the same section 27, which now authorizes temporary loans directly by the savings bank itself, upon certain classes of stocks and bonds. I see no reason why a savings bank should not keep its cash means as other banks do, in its own custody, in its own vaults.

An aggregate amount of deposits is now allowed to be made by one person, up to $5,000. I suggest that it be reduced to $1,000, or at most $2,000; and this inclusive of accumulated interest. Persons of considerable means now put money into a savings bank in order to get better interest than elsewhere. The institutions are not meant for this class. The possession of considerable means implies the capacity to take care of money. Nor do I approve of the provision of section 22, allowing deposits to be received from corporations and societies. Every association must necessarily have a business head, capable of taking proper care of its funds. An association of any kind does not need the aid of a savings bank.[9]

Section 23 implies that savings banks may properly receive deposits of money paid into court or under the order of a surrogate. A separate class of institutions — trust companies — have been provided for this special purpose and such deposits are, for the most part, in large sums. All the creditors of a savings bank ought to be of the same class, to wit, creditors for small sums. I am inclined to the opinion that the disasters among our savings banks are due, to some extent at least, to their having sought, of late years, after a class of business which formerly they never undertook, and for which they are not intended.

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[9] See 1873, note 2, *ante*, vol. 6, p. 530. The limit of an individual deposit in a savings bank was fixed at $3,000, by L. 1878, chapter 347.

Section 33 provides that dividends may be made of not exceeding six per cent per annum. This limit, I think, should be reduced to five per cent. High interest and increased risk always go together. Government bonds pay now only four and a half per cent per annum, and savings banks ought not to be tempted, by efforts to pay high interest, into dealing in any but the very safest securities.

Section 33 requires every savings bank, when it has acquired a surplus of ten per cent, to divide all accumulations beyond that. I submit that ten per cent is not sufficient guarantee against losses. In view of the great and sudden depreciation to which property of all kinds is sometimes liable, as we know by present experience, I am not sure that any limit should be put upon the accumulation of a surplus fund. Such a fund had better be too large than too small. It seems to me that the limit of ten per cent is, at all events, much too low.[10] These suggestions are respectfully submitted to your consideration. The purpose I have in view is, that this class of institutions, so valuable to the welfare of the great mass of the community, shall be rigidly confined to the duty for which they were created. They are semi-charitable in their nature, and their aid should not be given to nor their benefits shared by those who need no help.

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[10] Chapter 256, passed May 10, 1877, amended section 33 of the savings bank law of 1875, chapter 371, by reducing the rate of interest to five per cent., and increasing the reserve to fifteen per cent.

### COMMON SCHOOL STATISTICS FOR THE YEAR ENDING SEPTEMBER 30, 1876.

| | |
|---|---|
| Total receipts, including balance on hand September 30, 1875 | $12,643,969.59 |
| Total expenditures | 11,410,288.71 |
| Amount paid for teachers' wages | 7,949,085.17 |
| Amount paid for school houses, repairs, furniture, etc. | 1,779,124.19 |
| Estimated value of school houses and sites. | 31,817,904.00 |
| Number of school houses | 11,571 |
| Number of school districts, exclusive of cities | 11,027 |
| Number of teachers employed for the legal term of school | 19,341 |
| Number of teachers employed during any portion of the year | 30,209 |
| Number of children attending public schools | 1,067,199 |
| Number of persons attending normal schools | 6,391 |
| Number of children of school age in private schools | 134,404 |
| Number of volumes in school district libraries | 804,802 |
| Number of persons in the State between the ages of five and twenty-one years | 1,585,601 |

The foregoing statements should attract attention. Previous to the year 1856, the State appropriated $800,000 per year for the support of the common schools. The act of 1856 changed the practice by levying a three-quarter mill tax, which produced a little over $1,000,000 per year, until 1867, when the rate was raised to one and one-quarter mills, which produced over $2,000,000, and in consequence of the recent extraordinary increase of valuations, it now produces over $3,000,000, and for the next fiscal year it will be probably $3,500,000. Adding to this the amount raised by local taxation, for the same object, we have a grand total of over $12,000,000.

The amount paid for teachers' wages during the past year was $7,949,085.17. The whole number of children attending public schools was 1,067,199. The number attending normal schools, 6,391. The number of children of school age in private schools 134,404. If to all these we add the numbers of those who are instructed at home by private tutors, in academies, colleges and other institutions not reported, some idea may be formed of the immense amount of money drawn from the people of the State, voluntarily or by taxation, for school purposes. Without intending to intimate the least suspicion that any part of this large amount is unwisely or improperly expended, the subject is of such magnitude as to be worthy of careful examination and scrutiny.

The question whether the State can educate all the children within its limits better than they can be educated in schools organized, conducted and paid for by the parents of the children themselves, has been decided in favor of the State, which is now conducting the experiment on a very large and expensive scale. It is of the utmost importance that the experiment should be successful, and that it should be so conducted as to merit the confidence and support of the entire community. To this end, if there are any errors in the mode of conducting it, they should be corrected before they lead to evils which it may be difficult, if not impossible, to remedy.

The only ground upon which citizens who have no children can justly be compelled to pay taxes for the education of the children of others is, that it is necessary for the safety of the whole people under our form of government. Our institutions, by their very theory, carry with them the assumption of a certain grade of intelligence among the citizens. It seems, therefore, to be the duty of a State to see to it that each and every citizen, so far as practicable, shall be educated to such a degree as will enable him to read and understand the laws, the Constitution, and the ballot that he votes on election day. The schools in which education is given to this extent always carry their line of instruction far enough to embrace all the branches usually taught in our common schools. It seems to me to be a clear violation of personal rights for the State to go beyond this and levy taxes to support free academies, high schools and colleges, in which the higher branches of literature and science are taught, and young men prepared for the learned professions. This should be left to individual effort, from which better results always come than from any amount of donations from the State.

It should also be remembered that the expenditure of such large amounts of public money has almost invariably led to great abuses, and there is no security against the same tendency in educational management. The expenditures for school houses, repairs and furniture, during the last ten years, have amounted to $19,569,109.97. It is, perhaps, well to inquire whether this large amount has been wisely expended, in the construction of plain, substantial and comfortable school houses, or whether it has been, to any extent, handled by fraudulent contractors, or devoted to the construction of costly and ornamental buildings for the benefit, possibly, of the owners of adjoining property.

I would also suggest an inquiry as to whether the normal schools are really worth to the system what they cost. I am informed that a very large portion of the pupils instructed in them never follow the profession of teaching for any length of time.

There ought also to be found some remedy for the great abuse and expense arising from the number of new school books, and the frequent changes made, for no good purpose but simply to benefit the publishers and agents. It is undoubtedly true that inducements are frequently offered to school authorities and teachers to aid in the work of changing books and selling new ones. It would be strange if these temptations were always resisted. It seems to me proper that the Legislature should fix some limit to this evil.[11]

Finally, I would recommend a return to the former system of making an appropriation of a specific sum in each year from the State treasury for the benefit of the common schools, and put into the tax levy a rate sufficient to cover the amount — $2,500,000 at the utmost ought to be, and will be amply sufficient, if proper care is taken in the use of it. These suggestions are made in a spirit of sincere friendship to our common school system, to the end that it may not be exposed to any just objection; that its administration may be characterized by a wise economy, and by a degree of purity which shall place it above suspicion, and keep it in the future as it now is, strongly intrenched in the confidence of the people.

## COLLEGES AND ACADEMIES.

The annual report of the Regents of the University, soon to be communicated to the Legislature, will fully exhibit the condition of the colleges and academies of the State. Notwithstanding the stringency of the times the aggregate attendance in the colleges is somewhat greater, and but little less in the academies, than during former years. Some institutions of either class are adequately endowed, and others are making vigorous efforts to secure such an amount of productive funds as will place them on a secure financial basis.

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[11] Changes in school text books were regulated by chapter 413, approved June 5, which prohibited changes oftener than once in five years, except upon a vote of three-fourths of a board of education, or upon the three-fourths vote of the people at a school meeting in a common school district.

## THE STATE LIBRARY AND MUSEUM OF NATURAL HISTORY.

The Regents of the University, as trustees of the State Library and State Museum of Natural History, will report their condition, in detail, at an early day. Valuable additions to both have been made during the past year, the library having increased to more than 100,000 volumes. In the departments of law and American history it is unsurpassed by any other State library of the Union.

## THE NATIONAL GUARD.

From the report of the Adjutant General, as well as from my own limited observation, I learn that the condition of the National Guard is entirely satisfactory. The appropriations made for its support and improvement have been carefully and judiciously expended. The organization, spirit and discipline of the officers and men were never better. The improvements in rifle practice, to which special attention has been given during the past year, have been of a very gratifying character, and will be continued. At a comparatively small annual cost the National Guard is kept in such a condition of organization and discipline as to constitute a nucleus around which a large force could, if necessary, be gathered and made effective in a very short time.

At the present time the National Guard consists of eight divisions, eighteen brigades, one regiment and eleven separate troops of cavalry; one battalion and eleven separate batteries of artillery; twenty-five regiments, twelve battalions and eighteen separate companies of infantry — in all comprising 1,546 commissioned officers and 19,878 non-commissioned officers, musicians and privates, making an aggregate force of 21,424, showing an increase of 2,011 over the aggregate of last year.

## REDUCTION OF TAXES.

| | |
|---|---|
| In 1873 the State tax was................... | $14,800,903.38 |
| In 1874 the State tax was................... | 15,727,482.08 |
| In 1875 the State tax was................... | 14,206,680.61 |
| In 1876 the State tax was................... | 8,529,174.32 |

The large reduction of taxes for State purposes, shown by the above statement, is due in some measure to the reduced amount required for the bounty debt, but mainly to the stopping of expenditures for new works and extraordinary repairs upon the canals, and to the other reforms and economies which have been inaugurated and enforced during the last two years. By a rigid adherence to this policy the taxes may be still further reduced during the present year. Unless the people permit a renewal of the wasteful expenditures of former years, they will hereafter have no cause to complain of the amount of State taxes. The load which oppreses them most heavily will be found at their own doors in their town, county and city taxes. When they have the courage to look these in the face, and insist upon their reduction within reasonable limits, they will obtain the full measure of relief to which they are entitled.

The rate of taxation for the current fiscal year was fixed by the Legislature at its last session at three and eleven-twenty-fourths mills. For the next fiscal year it is estimated that two and three-quarter mills will be sufficient. But this estimate is based upon the assumption that the Legislature will decline to make appropriations which are not required for the legitimate expenses of government.

## INCREASED VALUATIONS.

The State Assessors inform me that there will be a very large increase in the valuations, especially in the agricultural districts, carrying the total valuations for the whole State up to the probable amount of about $2,800,000,000. This extraordinary increase is of doubtful propriety. It seems to be an effort to follow upward the unnatural prices caused by the currency inflation, at a time when the inflation has produced its inevitable disasters, and when prices are rapidly falling nearer to actual values. The effect of the increase is to render it uncertain what amount any specified rate will produce. Instead, therefore, of levying specific rates for particular objects, which may produce too much or too little, it would be better to appropriate the amounts required and fix a rate sufficient to cover them, so that, if there be a surplus, it shall remain in the treasury.

The efforts of the assessors should be not so much to increase valuations as to produce a just and equitable distribution of the burdens of taxation among the people. When this point is gained it is of little importance whether the valuations are above or below what are called actual values. For many obvious reasons it would be better that they should be below rather than above. The true value of property is rarely known. It is not a matter of fact, but of opinion. Hence it is always estimated and the tendency usually is to estimate too high.

### EXEMPTING CHURCHES, ETC.

It is proper to refer in this connection to propositions which are sometimes made to increase the valuation by changing the policy which has always prevailed in this State of exempting churches, schools and hospitals from taxation. I cannot too strongly express my disapproval of any such change. Our people of all classes and all creeds have surrounded themselves with these institutions of civilization which are foremost in the influences that diminish the expense of government by lessening the infractions of law. They should not be discouraged by the imposition of burdens from which they have hitherto been exempt.

### SURPLUS OF THE BANKS.

Taxing the whole surplus of the banks in addition to their capital is neither equal justice nor sound policy. Besides compelling them to pay more than their fair proportion, it induces them to divide their surplus among the stockholders, thereby diminishing the security which it gives to the public so long as it is held by the banks. In times like the present the exigencies of every day may diminish both surplus and security. The subject is submitted to your careful consideration and wise discretion.

## LEGISLATION IN APPROPRIATION BILLS.

A very objectionable practice has grown up of inserting general legislation in appropriation bills. The effect of it is to conceal legislative provisions in places where they ought not to be and where the public generally do not think of looking for them. It also puts it beyond the power of the Governor to withhold his approval from such provisions unless he vetoes the whole appropriation bill in which they are contained. I trust that the practice will be discontinued altogether, and that the question may not be presented as to whether such provisions shall become law or whether the appropriation bills containing them shall be returned disapproved.[12]

## THE STATE SURVEY.

Several instances of the pernicious mode of legislating above referred to will be found in the "supply bill" passed at the last session. The most conspicuous among them is the provision for instituting and organizing "an accurate trigonometric and topographical survey of the State." Without any application by the people, with no appreciable evil to remedy, with no practical inconvenience in the experience of a hundred years, and at a period of great pecuniary embarrassment, a plan is enacted in an appropriation bill for embarking the State, against the wishes of its people, in a work which promises to run through half a century, and to cost an unlimited amount of money. The mode and the matter of the enactment are alike objectionable, and I recommend the prompt repeal of that portion of the supply bill.

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[12] The Constitution of 1894, article 3, section 22, was intended to prevent the practice here condemned by Governor Robinson. The section provides that "no provision or enactment shall be embraced in the annual appropriation or supply bill, unless it relates specifically to some particular appropriation in the bill; and any such provision or enactment shall be limited in its operation to such appropriation."

### THE CURRENCY.

The vast agricultural, manufacturing, commercial and financial interests of the State make a sound and stable currency a matter of the highest importance. It is, however, of little use to enter into any extended discussion of the subject here. The country has been deluged with essays in regard to it, and all intelligent readers have as much information as they can hope for from such sources. So far as legislation can produce any effect, it must be looked for in Congress; the State is, of course, powerless in that direction.

Fifteen years ago wise action in the national legislature would have saved the country from the universal collapse which has fallen upon all business pursuits. At that time the whole amount of currency in circulation in the United States was estimated at between two and three hundred millions of dollars. Within four years from that time, the amount was carried up to nearly eight hundred millions, and has hitherto been kept up to over seven hundred millions. The result is the same as has always been produced by similar experiments, ever since a circulating medium has been known and used in the commercial world. There was a rapid rise of prices, wild speculations, all branches of business unduly stimulated, overtrading, luxurious habits of living, general demoralization, followed by the inevitable revulsions, widespread bankruptcy, suspension of industries, and multitudes of people deprived of employment and of the means of supporting life. Whilst we can only look to Congress for any legislative measures of relief from this state of things, it is quite evident that very little can be hoped for in that way. Substantial relief will only be obtained by a correction of the bad habits into which we have been led; by a return, if need be, to the simplest industries, to a reduction of all unnecessary expenditures, and a rigid economy, both in public and in private life.

### RAILROAD REPORTS.

Complaints are frequent among persons interested, both stockholders and bondholders, that the reports now rendered by railroad companies, including those operating street roads, are not in such form as to afford a clear and satisfactory view of their condition. These corporations being creatures of the State, endowed with great privileges, it is right that we should require from time to time, from each one of them, a full and clear exposition of its situation. Companies whose affairs are in a good condition will have no objection to this being made known, and it is due to the people that if any are unsound their condition should be exposed as promptly as may be. Concealment of such a state of facts from all but a few principal managers will often enable those who are most to blame for waste and loss to shift the burden thereof upon the shoulders of innocent persons.

A memorial has been sent to me, addressed to you and to the Legislatures of all the New England States, recommending a certain form of returns, which has been agreed upon, after consultation with some prominent railroad companies, in a conference of the commissioners of those States, and the State Engineer and Deputy State Engineer of this State. The memorial is signed by all these parties. One object in view is that the returns shall be of one and the same form in all the States, with the hope, no doubt, that this uniformity will be extended to those of the whole country. It is obvious that where the line of a railroad extends into two States, as is frequently the case, it must be more or less inconvenient to the company to make up its statements in two different forms, and that, moreover, there will be advantages to the public in having these returns uniform. I suggest to you an amendment of the general railroad law, giving to the State Engineer the power to prescribe the form of the returns — the same power that is vested in the railroad commissioners in Massachusetts — and such other power pertaining in that State to railroad commissioners as may be necessary to insure and enforce a proper exposition of the actual condition of these companies. You will be able to judge of this matter better after an examination of the memorial, and the papers accompanying it, which I shall cause to be sent to you. The form upon which the memorialists agreed will be found in the possession of the State Engineer.

### INSECURITY OF PLACES OF PUBLIC RESORT.

The recent calamity at the Brooklyn Theatre, said to be unequaled in horror by any like event heretofore, calls our attention most forcibly to the duty of providing by law, and by the severest penalties, against such disasters in the future. Those who seek to make money by gathering the people in crowds into their buildings, are bound to take every precaution to insure their absolute safety. The Legislature should enact regulations for all such buildings, so as to provide for the prompt suppression of fire and rapid egress for the crowd in case of alarm. In fact, the provision for safety and for exit should be so complete and so manifest that panics would not occur.

The danger is not limited to theatres and places of public amusement; rooms used for lectures or for public meetings, our large school houses and even churches are, for the most part, so constructed that in case of panic a large number of the crowd within is likely to be fatally injured in the fierce, natural struggle to escape.

The buildings owned by the public are as faulty as those used for private purposes. We are familiar with one or more fatal disasters among the children who, in cities, are crowded into four story school houses. Attention should, also be given to the security of passengers in cases of fire upon steamboats and railway trains.

Nothing more than this brief allusion to the topic can be necessary. Even without it, I am confident that you would promptly have given your attention to the subject.

## MUNICIPAL REFORM.

The report of the commission, appointed by my predecessor, to consider the subject of the government of cities, has not yet been received. I hope that I shall be enabled to present it to you early in your present session.[13] In some respects the government of the city of New York is in almost a chaotic condition; appropriations of money are regulated, not by the Common Council, but by a board of four persons, of whom only one is chosen by the people. The distribution of administrative and legislative powers is imperfect and uncertain. An out-going mayor has power to appoint, in some cases, subordinate administrative officers for a term exceeding that of the incoming mayor. Of the enormous debt resting upon the city, as I learn from one of the commissioners, the amount of $85,000,000 has been created by direct action of the State Legislature, without being asked for or approved by the common council of the city or the board of supervisors of the county, or by its taxpayers or its people. There are twenty-one of these objectionable laws still in force, under which the full amount of debt authorized by them has not, as yet, been contracted. It would be well to examine into this matter at once, for the purpose of repealing such of these acts as, in your judgment, should not be left in force. In some of the acts the amount of indebtedness has no limit, but it is provided that, on the simple requisition of a subordinate administrative department, bonds of the city may be issued, provided they do not exceed a certain sum per annum. The number of years during which the acts may continue to apply is not defined. The laws referred to are, in many instances, imperative, requiring the debt to be contracted.

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[13] See *post*, p. 134, for a note on the report of the commission on the government of cities appointed in 1875.

The evil practice of commanding the creation of debt, for local purposes, by local governments, is not confined to laws relating to the city of New York alone. Upon our statute book will be found many acts "authorizing and requiring" boards of supervisors, trustees of villages and the like, not only to levy extraordinary local taxes, for purely local purposes, but to incur indebtedness for such purposes. The duty of the Legislature in such matters is properly defined in article 8, section 9 of the Constitution, which says: "It shall be the duty of the Legislature to provide for the organization of cities and incorporated villages and to restrict their power of taxation, contracting debts, etc."

Whenever the Legislature undertakes to impose on a neighborhood local taxes or local indebtedness for local purposes, it assumes to have a knowledge of the case which none can have except those who live in the neighborhood affected. It undertakes to discharge the functions of village trustees, town officers, city aldermen or supervisors of counties; for which functions the men selected especially for these places are better fitted. Whatever evils may occasionally appear in local government should be remedied by the people at home, upon whom the responsibility should rest.

## CORRUPT USE OF MONEY IN ELECTIONS.

The Constitution and laws of this State contain many very stringent and excellent provisions for securing the purity of the ballot box and preventing the corrupt use of money in elections.[f] The penalties which they inflict upon those criminals who violate them are very severe. It is, however, apparent that in every important election the laws upon this subject are grossly violated or evaded. I recommend a thorough re-examination and revision of them with a view of rendering convictions more certain and with additional and severer penalties. So vitally important is the preservation of the purity of elections to the permanent existence of our form of government, that in my opinion any man who buys or sells a vote should be forever thereafter disfranchised and subjected to such other penalties as will be most likely to prevent the commission of the crime.

### BETTING UPON ELECTIONS.

Another gigantic evil, closely allied to the corrupt use of money, is the practice of betting upon the results of elections. This practice has always existed to some extent; but it, and the evils resulting from it, have recently been developed to an alarming extent. It is unquestionably true that many millions of dollars were staked upon the result of the late election. Every person interested in such bets had a strong motive for corrupting and bribing voters, and there is no doubt that many yielded to the temptation. The heat and excitement of the contest were also greatly intensified by the same cause. I recommend the enactment of a law, with severe penalties, entirely prohibiting all bets, direct or indirect, upon the result of any election.[14]

### NATIONAL AFFAIRS.

The recent presidential election threatens to prove an epoch of solemn portent in our history.* For the first time in the twenty-two elections which have been held for President and Vice-President of the United States, the result remains a subject of controversy after the canvass of the votes within the States has been made and announced. The two houses of Congress have been heretofore repeatedly required to pass upon the authenticity and validity of electoral votes, but in no former instance has the election turned upon the questionable votes. In every former case the result has been determined by electoral votes which were not in controversy. In the present instance one candidate for President and one candidate for Vice-President have received 184 undisputed electoral votes, as well as a popular majority exceeding a quarter of a million. Another candidate for President and another candidate for Vice-President have received 165 undisputed electoral votes. All the votes of three States — four in Florida, eight in Louisiana and seven in South Carolina — making nineteen in all, are still in dispute; also one of the three votes of Oregon. In all these cases two sets of returns have been "transmit-

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[f] See Const. 1846, art. 2, § 2, am. 1874; art. 12, § 1, am. 1874.

[14] Chapter 178, passed April 25, related to bets, wagers and pools, including bets on the result of political nominations or elections. A violation of the statute was made a misdemeanor.

* The contest growing out of the presidential election of 1876, was deter-

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mined by an Electoral Commission created by an act of Congress passed January 29, 1877. The Commission was composed of fifteen members, five justices of the Supreme Court, five Senators, and five members of the House of Representatives. The Commission gave all the electoral votes from the contested States — Florida, Louisiana, Oregon and South Carolina — to the republican candidate for President, Rutherford B. Hayes, and the republican candidate for Vice-President, William A. Wheeler, making 185 electoral votes for these candidates as against 184 for Samuel J. Tilden, the democratic candidate for President, and Thomas A. Hendricks, the democratic candidate for Vice-President.

The situation presented by this contest resulted in an act of Congress passed on the 3d of February, 1887, prescribing the time and method of counting electoral votes for President and Vice-President, and declaring the effect of state action in relation to the choice of presidential electors.

See Re Green (Fitzgerald v. Green) (1889) 134 U. S. 379, where it is said that although presidential electors are appointed under the authority of the Federal Constitution, they are not officers or agents of the United States. They are appointed by the State, and a State court has jurisdiction to punish fraudulent voting for such officers. It was held in this case that a circuit court of the United States had no power to grant a writ of *habeas corpus* to inquire into the propriety or validity of a conviction for this offense in a State court.

ted to the seat of government, directed to the President of the Senate,'' to await the action of the two houses of Congress whose duty it is to verify, ascertain and count the electoral votes.[a]

In a situation involving such momentous results as the chief magistracy of this republic, all the baser as well as the better forces of society are naturally embattled to secure the prize. It is in such crises of history that the controlling force of cardinal principles is liable to be weakened, dangerous concessions to be made, perilous precedents established, sacred traditions violated, and the most important bulwarks of constitutional freedom rendered less secure.

In Louisiana we have seen a State government imposed on the people by the military force of the federal executive, under color of a pretended order of a federal judge, which order in itself was void, and which led to the resignation of the judge who made it, to escape impeachment. We have seen the government thus imposed by military force condemned as illegal and a mere usurpation, by both houses of Congress, and the electoral votes given under its auspices, rejected in the counting of the presidential votes in 1873 by the concurrent judgment of the same tribunal. We have seen the government so imposed create "a returning board" practically vested with absolute power to revise and, if they please, to reverse the results of the election by the people of the State, and thus organize a political mechanism under which an oligarchy in temporary possession of the legislative power of a State might perpetuate their ascendency indefinitely.

I pause here in this statement to interpose, in behalf of the people of this great commonwealth, a solemn denial of the power of any State government or of the federal government to vest such powers as are claimed by the Louisiana returning board in any canvassing board whatever.

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[a] See U. S. Const. 12th Am.

In the first place, such powers in respect to the choice of presidential electors are not warranted by, but are repugnant to the Constitution of the United States. The provision of section 1 of article 2 of that instrument, "that each State shall appoint, in such manner as the Legislature thereof may direct, its presidential electors," does not confer on the Legislature of a State an unlimited power over the subject. No one will pretend that a temporary majority in the Legislature of a State could grant to an individual or to a set of individuals, the power to appoint presidential electors; that it could make this grant for a period of years, or indefinitely, or to his or their heirs or assigns.

What it cannot do in form it cannot do in substance; what it cannot do directly it cannot do indirectly. The choice which a Legislature is authorized to make for a State, in the mode of appointing presidential electors, is limited to a mere selection between certain known forms of action, recognized in the practice of popular government, and consistent with the nature of popular government. It is a choice of modes, but must not change or destroy the essential character of the thing itself. It is subject to the condition that "the State shall appoint" the presidential electors. The State, that is, the political community known in our jurisprudence and constitutional law by that name, must "appoint" and in doing so it must act by and through its known and rightful organs. At the time this provision of the federal Constitution was adopted, it was contemplated that the Legislature of a State possessing all the governmental powers not withdrawn by the provisions of the State Constitution, or transferred to the government of the Union, might itself choose the electors. And, indeed, that was the mode at first generally practiced by the States. The State Legislature at that time was regarded as the most natural and the legitimate organ of the State. The power to choose presidential electors might properly be conferred upon the people of the State by a general ticket, the voters throughout the State choosing all the electors; or they might be chosen by the people of the State voting in districts, each district choosing one elector. These were methods consonant with the principles of our system of government, and by either of which it could be properly said that the State did, in fact, "appoint" the electors.

It is historically certain that these different modes were in the contemplation of the convention which formed the Constitution. Experiencing some difficulty, however, in imposing this duty upon all the States by any one uniform system, it devolved upon the Legislature of each State the authority to choose from among these methods, one for the exercise of that power which it granted in declaring that "each State shall appoint."

While the Legislature of a State may provide that presidential electors shall be appointed by an election of the people, it cannot provide that that election shall not be a reality; that it shall be a sham, and that the actual power of determining the choice shall be invested in a packed committee, whether it be called a "returning board," or by any other name.

Neither can it invest a board of canvassers with indefinite or with arbitrary powers, nor with any authority which, by the principles and practice of our jurisprudence, and the policy of our elective system are not fairly incident to the function of ascertaining the vote of the people. This seems to me to be the obvious, the wise interpretation of the Constitution of the United States and of its laws. Any other doctrine will open the way to abuses, frauds and usurpations, which must end in destroying popular elections. The moment we depart from a strict construction of grants of power in derogation of the integrity and efficiency of the elective system, we shall be able to find no rule that will protect the rights of the people. We shall tempt transient majorities to seek to prolong their power by tampering with the machinery of elections, and the easiest, most convenient and most effectual method for such a purpose is by the contrivance of returning boards, which shall be packed and equipped with powers hitherto unknown to our laws and practically subversive of the will of the people.

In the particular case of Louisiana, other equally grave illegalities are believed to exist. The powers vested in the returning board are inconsistent with the provision in the Constitution of that State which guarantees the elective franchise to voters, and also with the provision which confers the judicial power upon the courts. It is probable that the powers of this board, by the law of Louisiana, do not apply to presidential electors; that the board itself was not constituted in accordance with the law under which it was created; and finally, that a condition, without which the returning board could not get jurisdiction in the cases where it assumed to reject votes of whole districts, was not complied with. There is every reason to believe that the authority exercised by that returning board is void, as repugnant to the Constitution of the United States,[b] and also to the Constitution and laws of Louisiana.

In this state of the law, that returning board, according to public statements of conceded facts, by manipulations of the returns, have changed a majority for one set of presidential electors of about 9,000 to a majority for another set of about 4,000 which would be equivalent to a change of over 80,000 votes in the State of New York.

In Florida we have seen a board of State canvassers, solemnly adjudged by the highest court in the State to possess none but ministerial powers, assume the authority to reverse the choice of electors as shown on the face of the returns made by the officers who conducted the elections and received the votes; and to do this in open disobedience and contempt of the judicial tribunal having jurisdiction in such matters, and vested with the right of final judgment.

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[b] U. S. Const. 12th Am.

In South Carolina we have seen the board of State Canvassers fabricating a canvass in like disobedience and contempt of the Supreme Court having jurisdiction and the right of final judgment; we have seen federal soldiery take possession of the capitol of the State, and a corporal at the door determining who were the elect of the people and who were to be permitted to represent them as legislators. Notwithstanding some of these acts have been disavowed by the federal executive, no mark of disapprobation has been put upon the authors of the outrages; the officer in command goes still unrebuked, and when the returning board were committed to prison for contempt, by the highest court in the State, a judge of the United States District Court is sent down to South Carolina, and, without jurisdiction in the case, grants a writ of *habeas corpus,* and discharges the offenders. These proceedings are the more extraordinary and alarming when we consider that such violations of law and of right have been resorted to to overturn elections, all the officers conducting which, were of the same political party with the candidates in whose favor these acts have been committed; that the elections were held under the surveillance of troops of the United States, without any constitutional warrant for their presence, and that the judicial decisions thus set at naught cannot be suspected of any partisan bias, for they were rendered both in Florida and South Carolina by judges all of whom were of the same political party with the returning board.

These interferences of the military power have been committed in flagrant violation of the Constitution and laws. They were not provoked by domestic violence; they were not invited in the only way that would have made them constitutional by the Legislature of the State; and they were continued after the election was over and during all the subsequent proceedings of the canvassing board. Their tendency was to overawe the voters under the pretense of keeping the peace, though by measures in themselves unlawful, and to deliver dishonest officials from the natural sense of responsibility and the natural timidity in regard to the consequences of their acts, which are providential limitations to men's conceptions of the crimes upon which they may venture.

While these things were going on in the South a member of the Cabinet at Washington was acting as chairman of a partisan national committee, and with the co-operation of some of his colleagues in the Cabinet, counseling and systematically stimulating these desperate measures.

The result which these proceedings seem designed to accomplish cannot be secured without one farther step in the processes of usurpation. The fabrication of electoral votes amounts to nothing unless they can be counted by the tribunal whose constitutional duty it is to verify and authenticate them. That inexorable necessity has given birth to a new device for counting the votes, not only unknown to the Constitution, but in conflict with the construction hitherto always accepted, and with the invariable practice and precedents. That device is for the President of the Senate to usurp the power of determining what votes shall be counted and what shall not be counted, and to exercise that power in disregard of the orders of the two houses. It would not be credible that so monstrous a claim as this could be seriously asserted if leading Senators had not publicly avowed it.

Nothing could be more abhorrent to the spirit of our system of government than such a one-man power. The President of the Senate is elected by the Senators, and they in turn are elected by the State legislators. He is, therefore, three removed from the people. If such a power were to have been vested in a single man, a depository would have been chosen not so far removed from popular accountability. But the people of this country will never vest such a power in any one man, however selected. They will never consent to a new construction of the Constitution and laws that bears such fruit. They will stand firmly in the ancient ways, and insist that the electoral votes in this emergency shall be counted as they have always been counted, by the two houses of Congress, and by nobody else. They will look with just suspicion upon the purposes of any who would propose to depart from the precedents which have been hallowed by time, and the uniform practice of the republic from its foundation.

The Constitution of the United States confers upon the President of the Senate no power whatever in respect to the counting of the electoral votes, except " in presence of the Senate and House of Representatives," to " open " all the certificates which may be transmitted by the colleges to the seat of government, directed to him.[1]

The Constitution confers upon the President of the Senate no power to determine the authenticity and validity of an electoral vote, or to interfere in any wise with any such question.

No President of the Senate has ever claimed or exercised such a power at any of the twenty-one presidential elections that have occurred under our Constitution.

The mode of procedure for the counting of electoral votes has been invariably regulated by the two houses of Congress, by concurrent resolution or standing rules adopted before the count. Those resolutions or rules have prescribed every step in the whole process; every function of the tellers and of the President of the Senate, whenever any additional service, even of the most formal sort, has been required of him.

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[1] U. S. Const. 12th Am.

In every instance the counting has been conducted in conformity with the procedure thus prescribed by the two houses; by servants designated by the two houses under instructions and in the presence of the two houses, and with the entire concurrence and the implicit obedience of every President of the Senate who has participated in these ceremonies.

So often as any question has arisen as to the authenticity or validity of an electoral vote, the two houses have assumed and exercised the exclusive power to act upon and determine that question. They have, in contemplation of law, themselves made every count; they have from the first, assumed exclusive jurisdiction to regulate and govern the whole transaction by temporary concurrent orders adopted for the occasion, by standing joint rules and by the enactment of laws. Such has been the uniform and uninterrupted course of precedents, the invariable practice of the government, and the official exposition of the Constitution which has been deliberately adopted, invariably acted upon, and universally accepted.

No fitter repository of all such powers as are vested in or must of necessity be exercised by the government, can be found than the two houses of Congress. They are not only the general agents of the people under our representative system, but in case of the failure of a choice of President and Vice-President by the electoral colleges, they are expressly charged by the Constitution with the duty of making the election.

The people of the United States will never consent to have their Representatives in Congress stripped of these powers, or tolerate this usurpation by a deputy of the Senate, or by any single person, and still less by an officer who is frequently interested as a candidate in the result of the count.

In this sentiment and purpose the State of New York cordially concurs. Foremost among all our American commonwealths in population, in the variety and extent of her industries and interests, she has in every vicissitude of public affairs put forth all her strength, moral and physical, to maintain the existence and the just authorities of the Union, and she can never consent that the time consecrated methods of constitutional government shall be supplanted or overthrown by revolutionary expedients.

L. ROBINSON.

## SPECIAL MESSAGES.

January 3. To the Assembly: Transmitting the annual report of the Adjutant General.

January 3. To the Assembly: Transmitting the annual pardon report for the year 1876.

January 9 and 10. To the Senate and Assembly respectively:

STATE OF NEW YORK,

EXECUTIVE CHAMBER,
ALBANY, *January* 9, 1877.

Hon. WILLIAM DORSHEIMER, President of the Senate:

DEAR SIR.—I have received from the Secretary of State a communication from which the following is an extract:

"I wish to call your attention to the very imperfect condition in which the bills from the Legislature frequently come to this office. They are not only often carelessly written and punctuated, but erasures are freely made by the engrossing clerk, which are calculated not only to throw serious doubt upon their authenticity, but bring all through whose hands they pass in all time to come, under the possible suspicion of tampering with them."

The Secretary of State also caused several specimens of the alterations referred to to be exhibited to me. The great impropriety of them is apparent. There is nothing to show when, or by whom, they were made. The probability is that they were made by the engrossing clerks, for the purpose of saving themselves the labor of engrossing the bills anew. However this may be, I think it my duty to call the attention of the presiding officers of the Senate and Assembly to the matter, and to say that I shall feel constrained to disapprove any bill in which such alterations appear.[15]

I am, with great respect, yours, etc.,

L. ROBINSON.

January 31. To the Assembly: Transmitting the annual report of the Cooper Union for the Advancement of Science and Art.

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[15] The practice of engrossing bills and presenting them to the Governor in manuscript continued several years. In January, 1893, the State Bar Association adopted a resolution requesting the Legislature to abolish the rule requiring the engrossing of bills before their presentation to the Governor and the substitution of printed bills therefor. This action by the association was presented to the Senate on the 10th of January, 1894.

The same day the Statutory Revision Commission presented a communication to the Senate, which was also presented to the Assembly the next day, recommending an amendment of the Senate and Assembly rules so as to authorize bills in their final form to be either printed or engrossed.

The amendments proposed by the commission were adopted in substance by the Assembly on the 26th of January, and by the Senate on the 30th. The Assembly amendments were to take effect on the first of February. The first printed bill approved by the Governor, became chapter 25 of the Laws of 1894, and was signed on the 14th of February. During the remainder of that session a large number of bills were presented to the Governor in printed form, but several were in manuscript. Either form was permissible under the amended rules.

The supply bill, chapter 768, appropriated $2,500 for printing substitutes for engrossed bills as authorized by the foregoing amended rules. This subject was included in the Constitution of 1894, which (article 3, section 15) required all bills in the final printed form to be on the desks of members at least three calendar legislative days before their final passage, unless the Governor should certify to the necessity of the immediate passage of the bill, in which case it might be passed without being printed. Beginning with 1895 bills have been sent to the Governor in printed form, except an occasional bill passed near the close of a session under a so-called "emergency" certificate from the Governor.

February 8. To the Assembly:

**Veto of a bill entitled "An act to legalize and confirm the official acts of J. Marshall Guion, a justice of the peace in the town of Seneca Falls, in the county of Seneca, and to enable him to take and file his oath of office."** [16]

"The bill is based upon the fact that the justice did not take or file the oath required by the Constitution[j] and laws before entering upon the duties of his office, or within the time prescribed. Being of opinion that the effect of such omission was a forfeiture of his office, and that the Legislature had no power to reinstate him, I referred the matter to the Attorney General, and have received from him the following opinion:

Hon. LUCIUS ROBINSON, Governor:

SIR.— I am of the opinion that a law which continues in office a justice of the peace who has neglected to file his oath of office within the time fixed by law, is unconstitutional.

Article VI, section 18 of the Constitution, is as follows: 'The electors of the several towns shall, at their annual town meeting, and in such manner as the Legislature may direct, elect justices of the peace, whose terms of office shall be four years. In case of a vacancy occurring before the expiration of a full term, they shall hold for the residue of the unexpired term.'

Article X, section 5, is as follows: 'The Legislature shall provide for filling vacancies in office, and in case of elective officers, no person appointed to fill a vacancy shall hold his office, by virtue of such appointment, longer than the commencement of the political year next succeeding the first annual election after the happening of the vacancy.' Section 8 is as follows: 'The Legislature may declare the cases in which any office shall be deemed vacant when no provision is made for that purpose.'

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[16] This bill was not passed over the veto, but another bill on the same subject was passed, and became chapter 329, on the 25th of May. This act did not authorize the justice to take an official oath, but it legalized his official acts, and declared them to be of the same force and effect as if he had taken the required oath. It also excepted pending actions and proceedings.

[j] Const. 1846, art. 12, § 1, am. 1874.

Article XII requires an oath. Section 21, p. 109, vol. 1, R. S., Edms. ed., fixes the time within which the oath must be filed. Section 34, p. 112, of same volume declares that an office shall become vacant upon the neglect or refusal of the incumbent to take the oath of office within the time required by law. And chapter 474 of the Laws of 1859, prescribes the mode of filling vacancies in the office of justice of the peace.

All the contingencies contemplated by the Constitution in the above cited provision have been provided for by the Legislature in the above cited statutes. Therefore, the failure to take the oath, creates a vacancy. The law provides for filling the vacancy by appointment; but the Constitution forbids the holding of the office so filled longer than the commencement of the political year next succeeding the first annual election after the happening of the vacancy. A law which attempts to continue an elective officer longer than that time is directly in conflict with the Constitution.

The logic of certain decisions of the Court of Appeals, I believe fully bears out this view. These decisions are:

People ex rel. v. Crooks, 53 N. Y. 648.
People ex rel. v. McKinney, 52 N. Y. 374.
People ex rel. v. Bull, 46 N. Y. 57.

Very respectfully your obedient servant,
CHARLES S. FAIRCHILD,
Attorney General.

In this opinion of the Attorney General I fully concur. If the office was forfeited the Legislature has clearly no power to fill the vacancy. If it was not forfeited the bill is unnecessary."

February 8. To the Assembly:

**Veto of a bill entitled "An act to amend an act entitled 'An act to incorporate the city of Binghamton, passed April 9, 1867,' and the acts amendatory of the same."**

"The bill proposes to amend the first section of title five of the charter of the city of Binghamton by striking out from said section (which enumerates the powers of the mayor) this sentence: 'He shall be *ex officio* a member of the board of education.' The sole object of the bill, therefore, is to remove the mayor from the board. I can see no good reason for this change. The board of education expends a large proportion of the taxes of the city, about one-half thereof, as I am informed. While the mayor has a veto upon all the appropriations made by the common council, neither he nor any other officer has any such power in regard to appropriations made by the board of education. It seems to be a very wise and just provision, therefore, that he should be a member of that body. He is the only member of it elected by the people of the whole city. There is no evidence that the proposed change in the charter is desired by the people of the city. On the contrary the common council, by a strong majority, have passed resolutions disapproving it, and a great many prominent citizens, without regard to party, have signed petitions to the same effect."

The bill was not passed over the veto.

February 19. To the Assembly: Transmitting a communication from Governor Charles M. Croswell, of Michigan, and also a resolution adopted by the Legislature of that State relative to the erection of a light house on Stannard's Rock, Lake Superior.

March 5. To the Assembly: Transmitting a letter from the President of the Commissioners of Emigration, protesting against the bill pending before the Assembly, authorizing the filling in of the channel between Ward's and Randall's Islands. The bill was not passed.

March 17. To the Assembly: Transmitting a communication from the Secretary of State of the State of Connecticut, with a memorial of the General Assembly of that State, relating to pilotage of vessels through Hell Gate.

March 19. To the Assembly:

**Veto of a bill entitled "An act for the relief of certain persons claiming to have acted as clerks and assistant clerks of the District Courts of the city of New York."**

"In January, 1876, the justices of several of the district courts in the city of New York, removed the clerks of their respective courts, and appointed others in their places. The power to make such removals and appointments was denied by the former incumbents, and judicial proceedings were at once taken, which finally resulted in judgments by the Court of Appeals, to the effect that the removals were illegal, that the clerks who had been removed were entitled to the offices and to the salaries provided therefor.* In pursuance of these judgments the salaries have been paid, and the legal liability of the city has been fully discharged. The bill under consideration peremptorily requires the financial officers of the city also to pay the clerks, who were unlawfully appointed, for their services during the pendency of the litigation instituted to test the validity of their appointment. On behalf of the city, objections are made to the bill which seem to me insurmountable.

Article 8, section 11 of the Constitution, provides that: 'No county, city, town or village shall hereafter give any money or property, or loan its money or credit to or in aid of any individual, association or corporation.' This bill requires the city of New York to give its money to private individuals who have not, and do not claim to have any legal right to it. If they had any such right, they could, of course, enforce it in the courts, and would not be before the Legislature asking it to compel the city to make this gift. The bill is, therefore, in direct conflict with the constitutional provision above cited.

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* See Whitmore v. Mayor (1876), 67 N. Y. 21; People ex rel. Healy v. Leask (1876), 67 N. Y. 521.

It is claimed that there are equities in favor of the men who were the *de facto* clerks during the litigation, and that it will be a hardship for them to lose their pay. If this were true, the answer to it is that the Constitution makes no provision for such hardships. It does not, however, appear to be true to the extent claimed. These men knew from the beginning that their title to the office was disputed, and during every day of their service they knew that they were trying an experiment, and were liable to be defeated, as all other parties are who are engaged in litigation. They were under no obligation to accept the appointments, nor to hold the offices for a day. They might have resigned at any time. They chose voluntarily to accept the office and to take the risk of the litigation in which their choice involved them. It is too much for them now to ask that they shall be relieved from the risk they took, and that the city shall be treated as an insurer of their success in the litigation and be compelled to pay their losses. It would be contrary to established principles of law and against public policy. It would furnish a bad precedent and encourage usurpation of office and future litigation.

There are other provisions of the Constitution which seem to me infringed in spirit, if not in letter, by this bill. Section 9, article 1, is as follows: 'The assent of two-thirds of the members elected to each branch of the Legislature shall be requisite to every bill appropriating the public moneys or property for local or private purposes.'

This bill was passed by a majority and not by two-thirds of the members of each house. It is said, in answer to this objection, that the term 'public moneys' should be construed to mean moneys in the State treasury. There is nothing in the Constitution which indicates that the meaning of the term should be thus limited, and certainly no reason can be given for holding that the moneys in the city treasury are not, in every respect, as much public moneys as those in the State treasury.

Section 24 of article 3 is: 'The Legislature shall not, nor shall the common council of any city, nor any board of supervisors, grant any extra compensation to any public officer, servant, agent or contractor.' It is not claimed that this section applies specifically to the provisions of the bill under consideration; but it does illustrate the spirit of the fundamental law and the sedulous care with which it guards the public moneys, both of State and cities, from appropriation to persons to whom there is no legal liability. It will be of evil example if, at a time when every possible effort is demanded to reduce the load of local taxation, the city of New York is forced to pay double salaries for one service. The State cannot afford to be unjust to the people in their aggregate any more than in their individual capacity."

The bill was not passed over the veto.

March 26. To the Assembly:

**Veto of a bill entitled "An act in relation to the superintendent of public works."** [See note 5.]

"The frauds and crimes in canal management brought to light within the last two years, are well known. They imposed impressive burdens alike upon taxpayers and the boatmen who navigate the canals. If they had not been arrested they would have covered the State with disgrace and brought the canals to ruin.

At the last election, the people, by a majority of 451,321, adopted an amendment to the Constitution establishing an entirely new system of canal administration.[k] It provides for the appointment by the Governor, by and with the advice and consent of the Senate, of one Superintendent of Public Works, who is to hold his office during the term of the Governor by whom he is nominated, and by whom he may be suspended or removed at any time, without any action by the Senate. The Governor himself is thus made responsible to the people of the State for the faithful performance of the duties of the Superintendent, whom he is bound to watch over and hold to a rigid accountability. The object of this provision is to hold the Executive head of the State responsible for any further mismanagement of the canals. The Superintendent is 'charged with the execution of all laws relating to the repairs and navigation of the canals.' 'Subject to the control of the Legislature, he shall make the rules and regulations for the navigation or use of the canals.' He is to appoint not more than three assistants who are to be subject to suspension or removal by him. 'All other persons employed in the care and management of the canals, except collectors of tolls and those in the department of the State Engineer and Surveyor, shall be appointed by the Superintendent of Public Works, and be subject to suspension or removal by him. The office of Canal Commissioner is abolished from and after the appointment and qualification of the Superintendent of Public Works, until which time the Canal Commissioners shall continue to discharge the duties as now provided by law.'

It must be apparent to every one that if the Superintendent was to have any chance of success in organizing this new system, preparing his plans and regulations, selecting his assistants and employes, repairing canals, and getting them ready for navigation at the usual time, it was vitally important that he should be appointed and enter upon the wide field of his duties at the earliest practicable day. Under the amendment, he might have been appointed at any time, but he could not enter upon the duties of his office until he had given the security to be required by law.

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[k] Const. 1846, art. 5, § 3, am. 1876.

In my annual message, communicated to the Legislature on the second day of January last, I called special attention to this subject, and earnestly urged the immediate passage of an act fixing the salary and the amount of security to be given, so that the Superintendent might be appointed and enter at once upon his work, leaving any further legislation that might be found desirable to be perfected at the convenience of the Legislature. This recommendation was disregarded. No bill was introduced until the twenty-second of January, and the one then introduced, as subsequently amended, was encumbered with many useless provisions, calculated to provoke protracted discussion and delay.

It was not until the sixteenth day of March, at the close of the eleventh week of the session, the bill came into the Executive Chamber. Careful consideration had already been given to the selection of a candidate most likely to be acceptable, one who would best meet all the requirements of the position, and for whose management of the canals the Governor might safely hold himself responsible to the people. Realizing the necessity of immediate action, within half an hour after the receipt of the bill I nominated to the Senate a gentleman known and honored throughout the State and Nation, a graduate of our National Military Academy, of distinguished ability as an engineer, and in the organization and discipline of men, and whose personal purity of character was universally acknowledged.* Having no entangling alliances with any canal combinations or party factions, it was believed that he was well fitted for the task of lifting the canal administration out of the difficulties into which it had fallen under the old system, and of placing it upon a higher plane. It was also believed that no man could be in more perfect accord with the spirit of that portion of section nine of the bill under consideration, which declares that ' no appointment shall be made for partisan purposes or by reason of political opinions.' The nomination was made on the sixteenth of March. It lay in the Senate until the twenty-second of March, when it was taken up and rejected by a strict party vote, in obedience to a determination of a party caucus, as was stated in open executive session upon the floor of the Senate. In the same manner, at the same time, and under the same caucus determination, the nominations of most competent and respectable gentlemen for Superintendent of the Banking Department, Health Officer, Port Warden and Captain of the Port, being all the executive nominations before the Senate for important positions, were rejected.

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* George B. McClellan.

This action could only be understood as a distinct notice to the Governor that no nomination he might make would be confirmed, unless made in obedience to the choice of the same party caucus. But even if this construction is not warranted, the rules of the Senate recently adopted by the same party majority, will prevent another nomination, unless by unanimous consent, before the first Wednesday in April, and defer action upon it until the third Wednesday in April. Only thirty working days remain between this and the first of May. Within that time the appointments must be made, the repairs on the canals completed, and navigation opened. If an appointment could be made at once, there would be no hope and no possibility that a Superintendent could organize and put into operation the new system provided by the constitutional amendment.

The Canal Commissioners foreseeing the fatal result of these delays, have deemed it their duty to proceed, and are proceeding with the work of preparing the canals for opening. It is scarcely necessary to add that any attempt to substitute the new system for the old, after operations have commenced under the latter, would be wholly impracticable. The long delays in passing the act and the action of the Senate since its passage have effectually destroyed the system so far as the approaching season is concerned. No possible alternative is left for opening the canals, except by the action of the Canal Commissioners under the old system, and in accordance with existing statutes.

The question then arises, what will be the effect of the bill under consideration if it shall become a law. Section eight of the bill provides that, 'the offices of the Superintendent of Canal Repairs and of division, resident and assistant engineers on the line of the canals are hereby abolished.' If, therefore, the bill be approved, the entire machinery by which the Commissioners are required to carry on their work will be destroyed. All work upon the canals must at once cease. They can neither be repaired, opened or navigated.

Even if a Superintendent of Public Works was appointed as contemplated by the bill, he would be seriously embarrassed by the cutting off at once of the entire engineering department of the canals. The work done through that department during the last year has been of great importance to the State, whilst the expenses have been largely reduced. The estimates for the current year show a further reduction to an amount believed to be much below what the cost would be under the plan proposed in the bill. It would be a hazardous experiment and poor economy for the first Superintendent of Public Works to undertake to carry on the operations of the canals without any assistance whatever from the engineering department upon which he must rely for accurate information.

Moreover, this bill makes no provision for the care and custody of the records and papers of these offices. The breaking up of that department and the removal of these records from their appropriate places of deposit, would put them in danger of being lost or stolen, in which case the State would be deprived of most important evidence in the trial of actions against parties charged with fraud and misconduct in regard to canal operations.

For the reasons herein stated, and as the only means now left for opening the canals at all, I am constrained to withhold my approval from this bill.''

The bill was not passed over the veto.

March 28. To the Senate:

**Veto of a bill entitled "An act to provide for the appointment of an additional number of notaries public."**

'' In 1863 the whole number of notaries public in the State was 2,624. In that year an act was passed which increased the number to a small extent. In various years since that date acts have been passed increasing the number to a very large extent until it now amounts to 11,742. There is manifestly no necessity for any such number. It amounts to one notary to every ninety-six voters. The bill under consideration if approved, will add 1,290 more, making a total of 13,032, equivalent to one notary to every eighty-seven voters. I can see no reason or propriety in any further increase of the number. As it now stands, the clerical force in the executive office is insufficient to take care of all the applications for appointments, to carry on the correspondence relating thereto, to prepare the commissions which are required to be issued to each one of the notaries, to prepare the lists for nomination, and to keep the record of the appointments. If the number is to be increased, as this bill proposes, to over 13,000, an additional clerical force will be indispensable. It is also undoubtedly true that, in the appointment of so large a number, without any opportunity for proper security, many persons receive appointments who know little or nothing of the duties pertaining to the office, and are wholly unfit to be intrusted with it.''

The bill was not passed over the veto.

April 2. To the Senate: Transmitting a communication from the Commissioners of Emigration, giving a statement of their affairs and resources.

April 3. To the Assembly: Transmitting a communication from Hon. A. T. Goshorn, Director General of the United States Centennial Commission relative to awards. [See Assembly Document No. 101.]

April 5. To the Assembly:

**Veto of a bill entitled "An act to amend chapter 617 of the Laws of 1873, entitled 'An act regulating the deposit of securities by plate glass insurance companies.'"** [17]

'' The present statute requires a deposit of $50,000 of securities with the Superintendent of the Insurance Department by every plate glass insurance company, as a condition precedent to the transaction of any business. The deposit is by law intended to, and does furnish a part of the security of the policyholders. All the companies of this class, now doing business in the State, have complied with this provision. Their securities are in the Insurance Department. The effect of the bill under consideration is to allow them to withdraw one-half of the securities and continue business upon a deposit of $25,000 only.

Many policies have been issued under the law as it now stands, and the value of each one is affected by this bill.

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[17] This bill was not passed over the veto, but another bill relating to the insurance of plate glass was passed, and became a law, chapter 439 on the 15th of June.

The security of the policyholders is lessened if it becomes a law. The statutes of the State assured them, when they took out their policies, that $50,000 was held by the Insurance Department as a guarantee of the solvency of the company. Upon that guaranty the insured relied, and had a right to rely. To diminish that guaranty by half would be injustice to the policyholders and bad faith on the part of the State. Sound policy, at present, demands added and not lessened security from insurance companies, and the present provision of the law is by no means too stringent.

For these reasons I am compelled to withhold my signature from the bill."

April 6. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *April* 5, 1877.

"I have received from Mr. William J. Best, who was appointed by the Supreme Court, in July, 1876, receiver of the Mechanics and Traders' Savings Institution, charges against De Witt C. Ellis, Superintendent of the Bank Department, accompanied by depositions and documentary proof in support thereof.

The charges are, that the bank was insolvent in July, 1874, the deficiency being then about $200,000; that this condition of the bank was exposed to Mr. Ellis in September, 1874, by two of its trustees; that Mr. Ellis then personally investigated the affairs of the bank; that upon such examination he admitted the bank was insolvent; that he was frequently requested by and on behalf of the two trustees to take immediate proceedings to protect the creditors, and that he neglected to do so until June, 1876, a period of nearly two years.

In support of the charges are submitted:

1. A balance sheet (Schedule A), made out by George N. Pratt, who was at the time general bookkeeper at the bank,

and verified by his oath, showing a deficiency in July, 1874, of $201,017.52.

2. The testimony of William Floyd and Ira W. Gregory, two of the trustees of the bank, contained in their depositions, that they, as a special committee appointed in July, 1874, to examine its condition, reported a deficiency of assets as compared with liabilities of $181,505.71, and a deficiency in annual income, if the usual dividend of interest to depositors were declared, of $15,041.70. Schedules B and C showing this condition of things, now appended to the charges, formed a part of their report. Mr. Floyd deposes further, that the trustees having, notwithstanding this report, declared the usual dividend, he, through F. P. Bellamy, his attorney, in September, 1874, laid copies of the report of himself and Mr. Gregory, accompanied by the schedules above mentioned, before Mr. Ellis and requested him to institute proceedings to protect the creditors; that, thereupon, Mr. Ellis went to New York and, in person, examined the condition of the bank; that after such examination Mr. Ellis admitted to Floyd that the report of himself and Gregory was substantially correct and that the bank was insolvent, and promised to take immediate measures to protect the depositors; that he, Floyd, frequently, between that time and June, 1876, urged Mr. Ellis to take some action in the matter, but that until the last named date, he neglected to do so.

3. The testimony of F. P. Bellamy, attorney-at-law, of Brooklyn, contained in his deposition, to the same facts and to the same admissions to him by Mr. Ellis, after his personal examination of the condition of the bank; that it was insolvent; and that he, Bellamy, had, on behalf of the two trustees above named, frequently urged Mr. Ellis, therefore, to take action to protect the creditors and had mailed several letters to Mr. Ellis to that effect, between the time of the examination aforesaid and June, 1876, but that Mr. Ellis neglected to take any proceedings until the last date.

4. The deposition of Mr. Gregory, to the effect that he confirms all that Mr. Floyd has stated concerning the acts and doings of Mr. Floyd and himself and of Mr. Ellis.

The annual report of the Bank Department, March 5, 1875, exhibits this bank as possessing a surplus of assets over liabilities of $67,240.88. [Assembly Document No. 108, page 148.] That of 1876 exhibits the bank with a surplus of $9,530.13. [See Assembly Documents of 1876, No. 97, page 157.]

Mr. Best alleges that at the time he was appointed receiver in July, 1876, the deficiency had reached nearly $350,000.

Upon these charges and the proofs in support of them, which I transmit to you herewith, it becomes my duty to recommend to you, as I now do, the removal from office of De Witt C. Ellis, Superintendent of the Bank Department.

This recommendation is made as a basis of action on the part of the Senate, and upon the assumption that the depositions annexed to the charges are true, and make out a *prima facie* case. It is due to Mr. Ellis to say that, upon my invitation, he has appeared before me and made explanations which seem to acquit him of any intentional wrong, but not, in my judgment, of culpable negligence. I submit the whole matter to the Senate for such investigation and action as it may think proper for the protection of public interests.[18]

L. ROBINSON."

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[18] See also special message of April 23, communicating further facts relating to this matter.

On the 23d of May, Governor Robinson, in response to a request from the Senate, convened that body in extraordinary session immediately on the final adjournment of the Legislature, which had been set for the 24th. On that day the Senate met for the purpose of considering the charges against Mr. Ellis. At the conclusion of the trial a proposition for removal was adopted by a vote of 21 to 10, following which the Senate adopted another resolution expressing the opinion that Mr. Ellis had not been guilty of any intentional wrong.

April 9. To the Senate:

**Veto of a bill entitled "An act to amend chapter 361 of the Laws of 1852, entitled 'An act to facilitate the dissolution of manufacturing corporations in the county of Herkimer and to secure the payment of their debts without preference.'"**

"The act of 1852, to which this bill is an amendment, provides a special method by which manufacturing corporations in the county of Herkimer, organized under the provisions of the act of March 22, 1811, may be dissolved. The present bill gives the same special privilege as to dissolution, to all such corporations in Herkimer county, organized under the general laws of the State. The Revised Statutes prescribe a comprehensive method of dissolving corporations of this class, in all cases where such dissolution is either necessary or proper.

If there is any reason for repealing or modifying this general statutory regulation with relation to Herkimer county, it applies with equal force to every other county in the State. If there is no such reason, the bill is superfluous, and ought not to become a law.

I am not advised of any valid argument in favor of a change in our general law on this subject. I know of no hardship or injustice resulting from its requirements nor any evil which would arise in Herkimer or any other county from its continuance as it now stands.

On the contrary, this bill seems open to every recognized objection to special legislation. It prescribes a rule for the corporations of one county entirely different from that which obtains throughout the State. If approved, it leads other localities to seek similar privileges not only in this, but in other departments of general law. Experience has taught severe lessons as to the abuse of this line of legislation. If this bill is right for Herkimer county, it is right for the State, and should be a general act. If it is wrong it ought not to be a law. Fully believing that no good can result from its provisions at all commensurate with the evil likely to attend legislation so clearly special, I must decline to approve it."

The bill was not passed over the veto.

April 11. To the Assembly: Transmitting a communication from Governor Charles M. Croswell of Michigan with a resolution adopted by the Legislature of that State, requesting the co-operation of New York in a recommendation to Congress, asking for an appropriation for the making of a harbor of refuge at Grand Marais Harbor on Lake Superior.

[See Assembly Document No. 100.]

April 12. To the Senate:

**Veto of a bill entitled "An act to empower the Board of Education of the educational district of Seneca Falls to appoint an assessor for such district."**

" The settled law and practice of the State provide that three assessors shall pass upon each valuation of property for purposes of taxation. An existing local statute already provides an additional assessor for the village of Seneca Falls. The present bill seeks to authorize the board of education to appoint still another assessor at such salary as they choose, to make a special assessment for them. It would seem that four assessors ought to be sufficient for a town of 7,000 inhabitants. The public do not favor the creation of new offices. The present bill provides that the educational assessor shall follow the last village assessment as far as practicable, of which, apparently, he is the sole judge. The board is not obliged to appoint a village assessor as the educational assessor, and these officers will probably be filled by different persons. The citizens of Seneca Falls will then be compelled to support this new officer, either simply to copy the existing assessments or to involve them in the disputes and litigations likely to attend a double set of valuations one for general and the other for school purposes.

Another objection to this act is, that it directs the board of education, upon the receipt of their assessment roll to levy a tax and issue a warrant for its collection. No restriction is laid upon them as to the time, purpose or amount of this levy, and it is more than doubtful if the present law furnishes any such restriction. I cannot find it consistent with my sense of duty to approve a bill which may result in so much evil.''

The bill was not passed over the veto.

April 12. To the Assembly:

**Veto of a bill entitled "An act to provide for the construction of fishways in the state dams across the Oswego, Oneida and Seneca Rivers."**

'' Since the appointment of the commissioners of fisheries in 1868, the Legislature has appropriated over $100,000 for replenishing the lakes and rivers of this State with fish. I understand there is an appropriation of $15,000 more in the supply bill of this year for the same purpose. With the appropriation of $7,000 proposed by this bill, it will make $22,000 for the present year. There can be no pressing necessity to warrant such an expenditure in the present condition of affairs. It cannot be done consistently with any claim to economy in the appropriation of public moneys. Moreover, if the work is to be done upon the dams constructed for canal purposes, it should be paid for from the canal fund and not by direct taxation. It is well known that the canal revenues are already inadequate to meet the demands upon them.''

The bill was not passed over the veto.

April 12. To the Assembly:

**Veto of a bill entitled "An act in relation to collectors and receivers of taxes."**

"This bill makes it the duty of collectors and receivers of taxes in the towns of this State to receive at par in payment of town, county and State taxes, orders issued by the board of supervisors upon the treasurer of the county in which said towns are located, providing said orders shall have been issued in due conformity with law.

This bill is probably the outgrowth of a custom prevailing in many parts of the State, by which the collectors receive these orders in payment of taxes where they know them to be correct. They are, of course, at liberty to refuse any order whenever they see fit to do so, and to demand current money. The present act, however, makes these orders a legal tender for taxes. The collector must receive them if they are legally issued.

The embarrassment and injustice of requiring tax collectors to pass on the validity of supervisors' orders must be apparent to everyone. The certainty of frequent errors is equally manifest. In the very probable event of a collector's accepting an illegal order or refusing a valid one, serious questions would at once arise involving the respective liability of the taxpayer, the collector and his bondsmen. It is doubtful if collectors in large towns could procure sureties were this bill to become a law. Annoying litigations would be its certain and speedy result. Nor would the bill afford any substantial relief. These orders are seldom presented by those to whom they are issued, but are bought up at a discount by those who are able to hold them until they are paid. The benefit arising from the act will, therefore, be conferred upon those who least need it — the purchasers of those orders. To elevate them to the rank of legal tenders would open the door to fraud and error, besides starting vexing questions of benefit to no one and positively detrimental to the public interest.''

The bill was not passed over the veto.

April 20. To the Senate:

**Veto of a bill entitled "An act amending chapter 837 of the Laws of 1868, and chapter 623 of the Laws of 1869, in reference to laying out, opening and continuing Bushwick Avenue, in the town of New Lots, Kings County."**

'' Section 1 of this bill provides that ' the commissioners now acting in the laying out, opening and continuing Bushwick avenue, in the town of New Lots, and their successors, immediately after the confirmation of the report of awards and assessments, as provided for in section 3, shall enter upon the lands taken for said avenue, and shall cause the same to be properly graded, regulated and prepared for public travel.'

Section 18 of article 3 of the Constitution provides, that the Legislature shall not pass a private or local bill in the case of ' laying out, opening, altering, working or discontinuing roads, highways or alleys.'

The bill is a clear violation of this provision. I am, therefore, compelled, as a matter of duty, to withhold my approval.

But, aside from its constitutionality, the bill ought not to become a law. By section 2 it is provided that the supervisor shall borrow, on the faith and credit of the town, such sum or sums as may be necessary for this improvement, and issue the bonds of the town therefor without any proper authority from the town. No limit is fixed to the power thus conferred, nor is it even provided that the bonds shall not be sold for less than par. Under this act money may be borrowed to an unlimited extent, and bonds issued and sold at such rates and on such terms as a supervisor thinks advisable. These two objections are fatal to the bill. The general laws provide that boards of supervisors shall take charge of the subject matter of this bill, and to them should be left the control of this and similar local improvements."

The bill was not passed over the veto.

April 20. To the Assembly:

**Veto of a bill entitled "An act to incorporate the fire department of the village of Plattsburgh."**

"This bill is open to numerous objections. In the first place, it is special legislation for a particular locality. General laws authorize the trustees of Plattsburgh to secure every wise object of this bill.

Again, it proposes to incorporate a fire department in the village of Plattsburgh which shall be substantially independent of its board of trustees and civil authorities. These officers are thus cut off from the supervision and control of the fire department, which they possess in other villages. An independent power is created within the village government which cannot result otherwise than in strife and collisions of authority prejudicial to the public interests and policy.

Lastly, the bill is earnestly opposed by the village authorities as improper and useless. They claim to represent, and doubtless do represent, the sentiment of a large majority of the people of Plattsburgh.

In the face of these arguments, it seems obviously improper that I should approve this bill."

The bill was not passed over the veto.

April 20. To the Assembly:

**Veto of a bill entitled "An act to provide better facilities for the election of town officers in the town of Watervliet, Albany county."**

"The bill is entirely local and special in its provisions. The general statute, chapter 482, Laws of 1875, passed in accordance with the Constitution, confers upon the boards of supervisors full power to regulate such matters. The bill cannot, therefore, become a law, without violating the plain spirit and intent of the Constitution."[l]

The bill was not passed over the veto.

April 20. To the Assembly:

**Veto of a bill entitled "An act to organize a fire department in the village of Andes, Delaware county."**

"The object sought by this bill may be secured under general laws. The spirit of the Constitution and the law are in decided opposition to the policy of special legislation for localities whose rights can be as well secured under existing general statutes.[m] If there are defects in the general enactments upon the subject, they should be obviated by amendments thereto and not by granted special exemptions and privileges to single localities. The trustees of the village of Andes are already clothed with full power to organize and maintain a fire department, and to accomplish every proper object of this bill."

The bill was not passed over the veto.

April 23. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *April* 23, 1877.

"Since my message to the Senate of the date of April 5, 1877, recommending the removal from office of De Witt C. Ellis, Superintendent of the Banking Department, upon charges and proofs then presented, I have received additional charges against the same officer, which I herewith submit for your consideration.

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[l] Const. 1846, art. 3, §§ 22, 23, am. 1874.

[m] Const. 1846, art. 3, §§ 18, 22, 23, am. 1874.

Of these, the following are made by Mr. John Mack, of 365 Fifth Avenue, New York:

1. That Mr. Ellis was informed in March, 1875, by Geo. W. Reid and W. F. Aldrich, bank examiners, that the Bond Street Savings Bank had made investments not authorized by law, and that it then had a deficiency of $20,000, in the annual income necessary to pay its dividends and expenses. The report of the gentlemen of their examinations made in March, 1875, attached to the next subsequent annual report of the department [see Assembly Documents, 1876, No. 97, pp. 269, 270] sustains this allegation. Mr. Mack adds that the bank was not put into the hand of a receiver until the following year, 1876.

2. That Mr. Ellis was informed in November, 1875, by Geo. W. Reid, examiner, that the People's Savings Bank of New York city had a large deficiency of assets, and a deficiency of $10,000 in annual income. The document previously quoted, page 316, sustains this allegation. Mr. Mack adds that no receiver was appointed until 1876.

3. A similar charge as to the Traders' Savings Bank.

4. A similar charge as to the Abingdon Square Savings Bank, reported by the examiner in November, 1875, as having violated its charter by certain transactions in real estate, sustained by the document already quoted, page 264.

5. A similar charge as to the German Savings Bank of Morrisania reported in April, 1875, as having a deficiency of $77,000 [see page 290 of document previously quoted], and allowed to go on until March, 1877, when it failed.

6. Charges of neglect of duty in reference to the Bank of Lansingburgh, the New York State Loan and Trust Company, and the Loaners' Bank.

7. A charge that in the autumn of 1873, he, John Mack, personally urged upon Mr. Ellis, the importance of an examination of the Security Bank, informing said Ellis, that he, Mack, had reason to know that from $60,000 to $80,000 of its capital had been lost; that Ellis refused and neglected

to make an examination; that in April, 1874, the bank failed, disclosing a loss of three-fourths of its capital.

In addition to these, the following charge is made by Edward Mallon, of 434 West Twenty-eighth street, New York city, to wit:

That Mr. Ellis was informed by George W. Reid and W. F. Aldrich, bank examiners, that in a written report of an examination made by them, of the Third Avenue Savings Bank, on the 22d and 23d of March, 1875, that the bank was then insolvent, having a deficiency of assets of $219,226.81, and of annual income of $44,791; that there was also an old deficiency of $115,000, discovered in previous years, for which last named deficiency the department had taken the personal bond of the trustees of the bank. These allegations are sustained by the report of the examiners, found in Assembly documents of 1876, No. 97, page 330.

Mr. Mallon alleges further, that an additional deficiency of $100,000 had been covered up by adding that amount to the cost of the banking house. He also alleges that the trustees are now resisting payment of the bond of $115,000, on the ground that there was no consideration given. He also alleges that the same report revealed large investments in real estate not authorized by the charter, and that many of the other securities were of doubtful value, which allegations appear to be sustained by the report above cited.

He also alleges that Mr. Ellis neglected to take any measures to close the bank, and that six months afterward, to wit, in September, 1875, it stopped payment; that during these six months great wrong was done by the trustees paying the deposits of certain favored friends, and by the bank, in that period, inducing 600 new accounts to be opened with it; and that a statement made by Mr. Ellis, in his report of the 30th of March, 1876, to the effect that in consequence of the examination made in March, 1875, he, the Superintendent, had caused the bank to be closed is untrue; that the loss to depositors is about $1,200,000, the dividend being only fifteen per cent.

As the Senate is already engaged in investigating charges similar to those heretofore presented, I have not deemed it necessary to submit those now made to Mr. Ellis, for any preliminary explanation on his part. The allegations contained in these, that Mr. Ellis was officially notified by his own examiners of the dangerous and, in fact, insolvent condition of the institutions named, are in several instances amply sustained by the documentary evidence cited. Whether he was guilty in any of those instances of culpable negligence in delaying proper action after he had been so notified, is a matter of very ready proof or disproof before you. That there may be no technical objection to investigation of and action upon these charges, I again recommend the removal of De Witt C. Ellis from the office of Superintendent of the Banking Department, as well upon the charges transmitted herewith as upon those heretofore presented and now under consideration in the Senate. [See note 18.]

L. ROBINSON."

April 23. To the Assembly:

**Veto of a bill entitled "An act to authorize the village of Sag Harbor, Suffolk County, to borrow money for purchasing a fire apparatus with the necessary appurtenances therefor, and to secure a supply of water therefor."**

"Chapter 151 of the Laws of 1847, and chapter 482 of the Laws of 1875, contain general provisions for the organization of fire companies, the purchase and care of fire apparatus, and the raising or borrowing of money therefor.

The powers sought to be conferred by this act upon the village of Sag Harbor, so far as they are either necessary or proper, are already vested in the authorities of that and every other village in the State by virtue of these existing general laws. Public sentiment is strongly opposed to special legislation for ends that may be accomplished under general acts, and, with that sentiment, I am in full accord. I must, therefore, decline to approve this bill."

The bill was not passed over the veto.

April 23. To the Assembly:

**Veto of a bill entitled "An act to prevent the taking of trout in the Owasco lake, in the county of Cayuga, for two years."**

"Subdivision 16 of section 1 of chapter 482 of the Laws of 1875, authorizes boards of supervisors 'to provide for the protection and preservation, subject to the Laws of the State, of game, animals and birds, and fish and shell fish, in all waters within the territorial jurisdiction of the county, and to prescribe and enforce the collection of penalties for the violation of any laws or regulations they may make, pursuant to the provisions of this subdivision.'

It will be conceded that this general act, passed by the Legislature in accordance with the provisions of section 18 of article 3 of the Constitution, gives the board of supervisors of Cayuga county power to legislate in regard to the subject matter of this act. The policy of the Constitution and the statute alike points to the consideration and determination of all such questions by the boards of supervisors, whose knowledge of local requirements is of course superior to that possessed by the Legislature. Believing this bill to be an unwise departure from that policy, I cannot approve it."

The bill was not passed over the veto.

April 23. To the Assembly:

**Veto of a bill entitled "An act to amend chapter 395 of the Laws of 1873, entitled 'An act to alter the system of repairing highways.'"**

"The law, as it stands, provides that highway commissioners, in repairing roads 'may give out the work to the lowest bidder on contract or appoint an overseer to do the same. They may contract for the work on some districts and have that on others done by days' labor, as they may think best.'

The bill proposes so to amend the law that these officers, throughout the State, in all cases, 'must give out the work to the lowest responsible bidder on contract.' In order to do the most trifling repairs on a country road, involving, perhaps, only one or two days' work, the formalities of inviting bids and preparing contracts would have to be observed, if this bill became a law.

The local officers, with the discretion now vested in them, will, in my judgment, protect better the interests of their neighbors in this little matter, than will any law emanating from the capitol, prescribing one iron rule for every road district. The law of 1873 is applicable to the whole State, and there is no evidence of a desire on the part of the people, generally, to have it altered. It was no doubt well considered when it was enacted four years ago. It is not wise to be amending general laws in order to meet the convenience, fancied or real, of one or two neighborhoods.

The policy of the Constitution is to remove all such petty regulations from the consideration of the Legislature, and to devolve local administration more and more upon the boards of supervisors.[a] In 1875, a comprehensive act was passed conferring additional powers on the supervisors of counties, extensive authority in this matter of highways and road districts being included in the powers then granted. It is not wise to reverse this policy. The bill tends to countenance legislative meddling with the minutest details of local administration. There is, in my judgment, no necessity for it, and it will be likely to do harm if it becomes a law.''

The bill was not passed over the veto.

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[a] Const. 1846, art. 3, §§ 22, 23, am. 1874.

April 26. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *April* 26, 1877.

"I have the honor to transmit herewith a report of the officers appointed by the President of the United States to examine and revise the exterior pier and bulk head lines of the harbor of New York, on the Staten Island side, in accordance with a concurrent resolution of the Senate and Assembly, adopted in the year 1875.

L. ROBINSON."

[For report see Senate Document No. 53.]

May 3. To the Assembly:

**Veto of a bill entitled "An act to provide for rebuilding the town hall in Mexico, Oswego County."**

"The objection to this bill is the same that has already been made to several other local and special bills. By chapter 482, Laws of 1875, ample authority is given to the town, and to the board of supervisors of the county, to accomplish all that the bill provides for. There is nothing to justify the Legislature in interfering in such matters."

The bill was not passed over the veto.

May 4. To the Senate:

**Veto of a bill entitled "An act to amend chapter 605 of the Laws of 1875, entitled 'An act in relation to the county treasurers of the counties of Monroe and Seneca.'"**

"It is, and for a long time has been, a gross wrong that the money paid by taxpayers for State purposes is not permitted to reach the State treasury until many months after its payment. It is stopped on the way and loaned, or used for commercial purposes, by the county treasurers, or by the banks in which they deposit it. Frequent losses and defalcations occur by reason of such misuse of the money.

The law which this bill proposes to amend was an effort to remedy the evil and to secure the payment into the treasury of the taxes as soon after their collection as practicable. As originally introduced into the Legislature, it applied to the whole State, but before its passage, all the counties, except Monroe and Seneca, were exempted from its operation. These two counties remain subject to its provisions, and the treasurers are required at stated intervals to pay over to the banks designated by the boards of supervisors all the moneys received by them, designating the amounts belonging to the State, which amounts are subject to immediate draft by the Comptroller and State Treasurer.

This bill exempts the banks from the liability to immediate payment, and authorizes them to keep the money until the middle of April and first of May, which will usually be a period of from two to four months from the time of its receipt. The banks give no security to the State. The bond given by the county treasurer to the State, if any is given, is fully complied with by his payment of the money to the banks in accordance with the law. The effect, therefore, of this bill, will be to place the money of the people in the banks, to be used by them without interest and without security, for the period above mentioned, and in the event of the failure of the banks the money would be lost.

The people should not be compelled to furnish capital for banking purposes, and run the risk of its loss besides. Taxes are levied for the benefit of the State, not of private corporations. Any relief the Legislature can extend in the matter of their collection is more needed by the taxpayers than the banks."

The bill was not passed over the veto.

May 4. To the Senate:

**Veto of a bill entitled "An act to amend chapter 654 of the Laws of 1869, entitled 'An act authorizing the construction of a railroad through certain streets in the city of Poughkeepsie, and through certain streets and roads in the town of Poughkeepsie, in the county of Dutchess.'"**

"The object of this bill is to relieve the railroad company chartered by the act sought to be amended from the obligation to run its cars during the months of December, January, February and March in each year.

Public franchises ought to be given to private corporations only for the public good, and when bestowed strict compliance with their duties to the public should be exacted from those who enjoy their profits. The months named in this bill are those in which the inclemency of the season renders the regular running of a railroad most necessary to public accommodation. If this company can be relieved from public service during the winter season, any other company is entitled to the same exemption. The bill seems to me contrary to justice and sound policy, and I cannot, therefore, approve it."

The bill was not passed over the veto.

May 4. To the Senate:

**Veto of a bill entitled "An act authorizing and confirming a lease made by Benjamin Lewis and other Seneca Indians to George A. Berry, of the right to transmit crude petroleum oil through a pipe over certain lands on the Allegany reservation, and authorizing said George A. Berry to use such lands for that purpose."**

"I understand that it has been held by the Supreme Court, both at special and general term, that no valid contract can be made with the Indians for the sale or use of their land on the reservation in question without the assent of the Congress of the United States.* Aside from this objection, it is evident that this lease is invalid, for the reason that it is made by certain individual Indians, and not by or with the assent of the Seneca Nation to which the lands belong.

I have received from the President of the Seneca Nation of Indians a protest against the approval of this bill, which states the case so truly and fairly, that I present it without abridgment. It is as follows:

INDIAN RESERVATION, *April* 21, 1877.

To his Excellency Gov. ROBINSON:

I notice that a bill has just passed the Legislature, confirming a lease purporting to have been made by Benjamin Lewis and other individual Indians to G. A. Berry, for pipe line purposes. I write to protest against the signing of this bill. As you are aware, the Seneca Nation of Indians has the legal title to the entire reservation, and through its council and chosen officers, is entitled to its control.

If any parties interested in pipe lines desire to acquire rights on our reservation, they should apply to our council, which has not been done in the case in question. This is the first instance within my knowledge where the Legislature has assumed to disregard the powers and privileges of the constituted authorities of the nation, and attempt to confer them upon individual Indians. If it can be done in one case it can in all. The result may well be that, through bargains with improvident and ignorant Indians, the rights of our nation may be seriously complicated and impaired.

On behalf of the nation, I respectfully but earnestly protest against such precedent as would be established if the bill in question should become a law. It will be seen that, if an individual Indian can make a lease for pipe line, he can for a railroad, distillery or for any other purpose. The possession of an individual Indian is allowed simply for the purpose of giving him a home, and not for any purpose contemplated by this bill.

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* See Seneca Nation v. Hammond (1875), 6 T. & C. 595.

Respectfully yours,
JOHN JACKETT,
President of the Seneca Nation of Indians.
T. T. JAMESON, Clerk, Seneca Nation of Indians.

The justice and propriety of the statements and remarks made in this protest must be admitted. The good faith of the State is pledged for the protection of the rights of the Seneca Nation of Indians on this reservation, and it must be sacredly observed, whatever may be the inconvenience to individuals."

The bill was not passed over the veto.

May 4. To the Assembly:

**Veto of a bill entitled "An act to amend section 9 of chapter 86 of the Laws of 1855, entitled 'An act to amend an act to provide for the incorporation of villages,' passed December 7, 1847, so far as relates to the village of Niagara City, in the County of Niagara."**

"The radical objection to bills, such as the one above named, is that they seek to compass the results of special legislation by an apparent amendment of the general law. The title of this bill indicates that it is an amendment of some general provision of the statute regulating the incorporation of villages, whereas, in fact, it is simply an attempt to evade the provisions of the general act of 1875, by which the regulation of highway matters in towns and villages was committed to the boards of supervisors.

Aside from this objection, which would apply to all bills of this class, the present act accomplishes no good object which could not be better attained under the statute of

1875. It is true that it adjusts the methods of operation to be followed by the village officials somewhat differently, but since the policy of the law now prescribes a single path in which all village authorities are required to travel, I cannot regard it as proper to assent to a variation of that course on the application of a single locality, whose officials do not accord with the judgment of the Legislature as to highway regulations.''

The bill was not passed over the veto.

May 4. To the Assembly:

**Veto of a bill entitled "An act to authorize the trustees of the Baptist Church and Society of Hoosick, New York, to remove the dead from their burying ground to the cemetery, and to authorize them to sell their burying ground."**

'' The subjects mentioned in this bill and the object of its enactment are fully treated and met by the provisions of chapter 482 of the Laws of 1875. It was the legislative intention to remove such matters from the field of local enactments. The wisdom of that intention is nowhere questioned. It seems to me that the general statute referred to authorizes every step provided for by this bill. If it does not, the defect should be remedied by an amendment to the general law, and not by a resort to the discarded and vicious line of special legislation.''

The bill was not passed over the veto.

May 8. To the Senate:

**Veto of a bill entitled "An act to authorize the election of women to school offices."** [19]

'' The bill goes too far or else not far enough. It provides that women may hold any or all of the offices connected with the department of education; that is to say, a woman may be elected Superintendent of Public Instruction, women may be appointed school commissioners, members of boards of education and trustees of school districts. In some of these positions it will become their duty to make contracts, purchase materials, build and repair school houses and to supervise and effect all the transactions of school business, involving an annual expenditure of over twelve millions dollars in this State. There can be no greater reason that women should occupy these positions than the less responsible ones of supervisors, town clerks, justices of the peace, commissioners of highways, overseers of the poor and numerous others. If women are physically and mentally fitted for one class of these stations, they are equally so for the others.

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[19] This bill was not passed over the veto, but the Legislature of 1880 by chapter 9, passed February 12, conferred on adult women the right to hold

But at this period in the history of the world such enactments as the present hardly comport with the wisdom and dignity of legislation. The God of nature has appointed different fields of labor, duty and usefulness for the sexes. His decrees cannot be changed by human legislation. In the education of our children the mother stands far above all superintendents, commissioners, trustees and school teachers. Her influence in the family, in social intercourse and enterprises, outweighs all the mere machinery of benevolence and education. To lower her from the high and holy place given her by nature, is to degrade her power and to injure rather than benefit the cause of education itself. In all enlightened and Christian nations the experience and observation of ages have illustrated and defined the relative duties of the sexes in promoting the best interests of society. Few, if any, of the intelligent and right minded among women desire or would be willing to accept the change which such a law would inaugurate.

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any school office, and made them qualified voters at school meetings. In 1892, by chapter 214, women were declared qualified to vote for the office of school commissioner, but this act was held unconstitutional by the Court of Appeals in Re Gage (1894), 141 N. Y. 112.

The bill is, moreover, a clear infraction of the spirit if not the letter of the Constitution.° Under that instrument women have no right to vote, and it cannot be supposed that it is the intention of the Constitution that persons not entitled to the right of suffrage should be eligible to some of the most important offices in the State.''

May 8. To the Senate:

**Veto of a bill entitled "An act to amend chapter 564 of the Laws of 1872, entitled 'An act to amend the charter of the village of Carthage, Jefferson County.'"**

'' The object of this bill is to confer upon the police justice of the village of Carthage, the powers of a justice of the peace. There are already four justices of the peace in the town of Wilna, in which Carthage lies, possessing and exercising the jurisdiction sought to be conferred by this act. It is not made to appear that the present officers are unable to discharge all the duties devolving upon them, or that there is any more need of another justice for public reasons in that town than in any one of a hundred others of like size.

Experience shows that in nearly every town in the State a reduction of the number of justices is more necessary than an increase. It does not seem wise at present to increase the number or functions of officials whose support must directly or indirectly be drawn from the pockets of the people. The laws of the State have fixed the number of justices of the peace in towns, and no additions should be made to the number in special localities without evidence of public necessity therefor.''

The bill was not passed over the veto.

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° Const. 1846, art. 2, § 1, am. 1874.

May 10. To the Assembly:

**Veto of a bill entitled "An act to amend chapter 24 of the Laws of 1870, entitled 'An act to amend an act entitled an act to amend the charter of the village of Dunkirk,' passed April 20, 1867."**[20]

"This bill does not accomplish the end evidently in view when it was drafted. By its terms it amends section 4 of chapter 24 of the Laws of 1870. But on reference to the law sought to be amended, it is manifest that the section named as the one to be replaced by the bill, is by no means intended. Were the bill to become a law, at least two sections of the act as it now stands, would be thrown into utter confusion. The result would be certain resort to the Legislature at its next session for relief from the present error. This being so, I have no alternative but to withhold my approval from the bill."

The bill was not passed over the veto.

May 10. To the Assembly:

**Veto of a bill entitled "An act in relation to proceedings in surrogates' courts."**

"This bill seeks to confer on surrogates the equity powers now vested in the Supreme Court in relation to releasing executors, administrators, guardians and trustees from the obligations of their trusts whenever they apply for such release and the surrogate deems it proper.

The equitable supervision of the officers mentioned has always been within the sole jurisdiction of the Court of Chancery, and its successor, the present Supreme Court. The sweeping change proposed by this act seems to me unwise as well as unnecessary. The powers in question have been well and carefully exercised by the Supreme Court, and no sufficient reason is shown for conferring upon an inferior court concurrent jurisdiction. Moreover, the Constitution gives this power to the Supreme Court, and, although it does not expressly forbid the Legislature to place it elsewhere, it seems more consistent with the intention of the instrument that this function should remain with the tribunal which has exercised it for so many years."[p]

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[20] The bill was not passed over the veto, but another bill amending the Dunkirk charter, correcting the error in the original bill referred to by the Governor, was passed and became a law, chapter 431 on the 6th of June, 1877.

The bill was not passed over the veto.

May 15. To the Senate:

**Veto of a bill entitled "An act to amend chapter 277 of the Laws of 1870, entitled 'An act to amend an act for the benefit of married women in insuring the lives of their husbands,' passed April 14, 1858."**

"It is perhaps doubtful whether authority to assign such policies as are mentioned in this bill would be in accordance with sound policy and good morals.

Upon that question there are differences of opinion among intelligent men who have made the subject of life insurance a profound study. But in this State the question has been settled so far as existing policies are concerned. In the case of Eadie v. Slimmon, 26 N. Y. Reports, page 9, the Court of Appeals decided that the children of a married woman who holds such policy have a vested right in it, which cannot be transferred by the husband and wife, or either of them. The Legislature cannot change that rule, except as to policies hereafter issued.

The bill, however, makes no discrimination, but applies to all policies heretofore or hereafter given. Recognizing the vested rights of the children, it provides for their consent to the transfer. Children over twenty-one years of age can give such consent without the aid of any new law.

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[p] Const. 1846, Art. 6, § 6, am. 1869.

But in most cases which arise, the children are minors and the act makes no provision for the mode in which their consent is to be given."

The bill was not passed over the veto.

May 16. To the Assembly:

**Veto of the following items in the supply bill, chapter 275.**

"'For Duncan C. McMillen, for his services as stenographer in reporting the evidence taken before the committee of the Assembly of eighteen hundred and seventy-one, appointed to investigate the facts of the assault by James Irving upon Smith M. Weed, and also for his services as stenographer in reporting the transactions of the committee of the Assembly for eighteen hundred and seventy-one, to which were referred the amendments to the excise law, the sum of eighty-five dollars.'

This item is objected to and not approved for the reason that it is a private claim of six years' standing, and has not been audited and allowed by the Board of Audit as it should have been before any appropriation could properly be made to pay it.

Section 19 of article 3 of the Constitution is as follows: 'The Legislature shall neither audit nor allow any private claim or account against the State, but may appropriate money to pay such claims as shall have been audited and allowed according to law.'

'For each of the law libraries of the State, in the several judicial districts, the sum of one thousand dollars; provided that all libraries receiving money appropriated under this act, must be open to the free use of the members of the bar of the State of New York.'

This item is objected to and not approved for the reason that the sum appropriated by it is not specifically stated as required by the Constitution. It does not state the number of libraries nor the sum necessary to pay the appropriation. Section 8 of article 7 of the Constitution expressly forbids the payment of moneys from the treasury unless the law making the appropriation 'distinctly specifies the sum appropriated.' It does not appear from this whether the sum intended to be paid is one thousand, ten thousand, or more.

The item is also objected to for the reasons stated for disapproving the next following item.

'For the purpose of establishing a law library, to be located at Canton, St. Lawrence county, for the use of the Supreme Court, the sum of two thousand dollars; to be expended in the purchase of books, under the direction and supervision of the justice of the Supreme Court, now residing in said village. The warrant of the Comptroller shall not, however, be issued for the above mentioned sum until an equal amount shall be raised either by private subscription or otherwise, and placed at the disposal of said justice for the same purpose; the certificate of said justice of such fact shall be evidence to the Comptroller that the sum has been raised and placed at his disposal.'

This item is objected to and not approved for the reason that it is unequal and unjust to compel the taxpayers of the State to contribute money for the establishment of law libraries in the various counties of the State. The practice has gone much too far already. It never should have been begun, and should be stopped at once and finally. If it is to be continued the county of St. Lawrence is perhaps better entitled to the favor than any other one; but when that is supplied there will be the next strongest claim, and so on until every county in the State has a law library established and supported from the State treasury. There is no more reason for supplying lawyers with their books than for supplying doctors and clergymen with theirs, or farmers and mechanics with their implements and tools. The convenience and advantage which the lawyers and judges will have from these libraries may easily be obtained by voluntary associations, and by contributions from those who are to be benefited by them.

'For the Comptroller, for payment of the sum of one thousand and thirty dollars and eighty-five cents, or so much thereof as may be necessary to pay the late clerk of Kings County, and for notices given to notaries public from January twentieth, eighteen hundred and seventy-one, to December ninth, eighteen hundred and seventy-six.'

This item is objected to and not approved for the reason that it is a private claim of some years' standing, and has not been audited and allowed by the Board of Audit as it should have been before any appropriation could properly be made to pay it.

'And for James B. Paddon, late clerk of the county of Oneida, fifty-four dollars and fifty-eight cents for like notices given in the year eighteen hundred and seventy-five.'

This item is objected to and not approved for the same reason, viz.: that it is a private claim and has not been audited and allowed by the Board of Audit.

'And for Tyrus H. Ferris, late clerk of St. Lawrence county, for like notices, the sum of sixty dollars, or so much thereof as may be necessary.'

This item is objected to and not approved for the reason that it is a private claim and has not been audited or allowed by the Board of Audit.

'For James W. Eaton, superintendent of the New Capitol, for counsel fees paid by him in the investigation before the county judge of Albany county, of charges against him as such superintendent, which were not sustained by proof, the sum of two thousand one hundred dollars.'

This item is objected to and not approved for the same reason above stated, viz.: that it is a private claim and in favor of Mr. Eaton for counsel fees paid out by him without any authority from the State, and the Legislature has no right under section 19 of article 3 of the Constitution to make such an appropriation until the claim has been audited by the Board of Audit.

'For the amount paid by him for the services of experts in such investigation, the sum of three hundred dollars.'

This item is objected to and not approved for the reason that it is a private claim of Mr. Eaton for disbursements paid by him, and has not been audited and allowed by the Board of Audit.

'And for the amount paid by him for the services of a stenographer in such investigation, the sum of three hundred and ninety-four dollars.'

This item is objected to and not approved for the reason that it is a private claim of Mr. Eaton for disbursements paid by him, and has not been audited and allowed by the Board of Audit.

'For the purchase and erection of a suitable monument in the county of Saratoga, in commemoration of the decisive battle of the Revolution fought in said county, one hundred years ago, the sum of ten thousand dollars, to be expended under the direction and supervision of the Comptroller, Secretary of State and Adjutant General.'

This item is objected to and not approved for the reason that it seems to me by no means an opportune moment to levy taxes upon the people of the State to expend thousands of dollars for the erection of monuments to commemorate notable events which have happened at different localities in this State. There is hardly a county which has not within its borders some localities signalized by events of historic interest. If it be once understood that the people of the State at large are to pay taxes for the erection of monuments to adorn these sites, the treasury will soon be burdened with drafts for like purposes from every county and from almost every prominent city or village within its limits. There is no more reason to erect these monuments at the places indicated than in many other localities in the State; and even if there were, I could not regard it as properly within the province of the Legislature to expend the people's money in their erection. Posterity will have little cause to heed our memory if in a time like this we force money from the pockets of the people to signalize the glories of the past.

'For the purchase and erection of a suitable and permanent memorial or structure in the city of Kingston, in commemoration of the organization of the State government, one hundred years ago, the sum of fifteen thousand dollars, to be expended under the direction of the Comptroller, Secretary of State and the Adjutant General.'

This item is objected to and not approved for the same reason stated for disapproving the item last mentioned.

'For the purchase and erection of a suitable monument at Fort Green, in the city of Brooklyn, over the remains of the martyrs of the prison ship, the sum of ten thousand dollars, to be expended under the direction of the Comptroller, the Secretary of State and the Adjutant General; provided an additional sum of fifty thousand dollars shall be raised by subscription or otherwise for the same purpose.'

This item is objected to and not approved for the same reasons given for disapproving the item of appropriation for the erection of a monument in the county of Saratoga.

'For John I. Davenport, for balance of his bill for services as counsel for the Senate Committee to investigate the several departments of the city of New York, two thousand dollars.'

This item is objected to and not approved for the reason that the State already holds a receipt in full for the services mentioned in the item. The claim for these services was originally presented to the Comptroller in 1876, at the figure of $5,000. It was carefully considered by him and the sum of $3,000 allowed the claimant. The allowance was regarded as liberal at the time, and the claimant accepted it in full payment.

'For Darling, Griswold and Company, for board and rooms for said committee, seven hundred and sixty-nine dollars and fifty-eight cents.'

This item is objected to and not approved for the reason that it is a private claim of long standing, and has not been audited and allowed by the Board of Audit as required by the Constitution.

'For the trustees of the State Library for the purchase of a frame for the portrait of Abraham Lincoln, now in the library, the sum of three hundred and twenty-five dollars.'

This item is objected to and not approved for the reason that it has already been presented to the Board of Audit and by them disallowed. Under the Constitution, as above cited, the Legislature has no power to make the appropriation, and the Comptroller none to pay it.[q]

'For the city of Syracuse, for the amount apportioned and assessed by the authorities of said city upon the property belonging to the State in said city, for construction of a sewer in Clark street and Leavenworth avenue in said city, the sum of four thousand two hundred and thirty dollars and twenty-four cents, or so much thereof as may be necessary.'

This item is objected to and not approved for the reason that, on principle, the State ought not to be compelled to pay to its municipal corporations assessments for local improvements within their limits. The property of the State is ordinarily of more benefit to the particular locality in which it lies than to the State itself. And to sanction the principle that the cities and villages of the State may, in their discretion, assess State property for local improvements, is to open the door to unlimited calls and drafts on the treasury for moneys to be expended at the discretion of such local authorities. Such assessment and taxation upon State property is beyond the jurisdiction of such municipalities. Their power is derived from the State itself, and it is not to be admitted that they can impose liabilities upon the superior power which created them. In cases where it may be proper for the State to contribute to such expenses the Commissioners of the Land Office should investigate the matter and the State should voluntarily pay such proportion as it may deem just and equitable.

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[q] Const. 1846, art. 3, § 19, added 1874.

'For the county of Cayuga, to reimburse it for all expenses incurred and paid for the two trials in eighteen hundred and seventy-three, and eighteen hundred and seventy-four, and appeals thereon, of Michael Donohue, indicted for the murder of a convict in Auburn prison, including all disbursements made necessary during the incarceration of said Donohue, prior to, pending, and subsequent to the trials; for like expenses incurred and paid for the trial, in eighteen hundred and seventy-four, of John Coughlin, Thomas E. Hardy, Patrick Eagan and Patrick Clifford, indicted for assault, with a deadly weapon, upon a keeper in said prison, including like disbursements; and for like expenses incurred and paid for the trial, in eighteen hundred and seventy-five, and appeals therefrom, of Edwin Thomas, indicted for the murder of a convict in said prison, including like disbursements, the sum of six thousand seven hundred and twenty dollars and seventy-one cents, or so much thereof as may be necessary.'[21]

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[21] The item was not passed over the veto. The claim of Cayuga County as set forth in the foregoing vetoed item, was considered again by the Legislature in 1885, and by chapter 428, approved June 8, the county was authorized to present a claim to the State Board of Claims for expenses incurred in these trials. This obviated the Governor's objection to an audit by the Legislature. The act of 1885 was sustained in Cayuga County v. State (1897), 153 N. Y. 279, where it was held that the expenses incurred by the county in the trial of offenses committed by convicts in the Auburn State Prison was a proper charge against the State. The prison is a State institution, not subject to county supervision or control, and therefore the whole State should bear the expenses connected with the trial of offenses committed by convicts in the prison.

By L. 1882, chap. 389, expenses incurred in the trial of offenses committed by convicts in a State prison, or in the Elmira Reformatory, were made a charge against the State.

This item is objected to and not approved for the reason that it is in every proper sense a private claim, consisting of very many separate items, and under the Constitution is subject to the audit and allowance of the Board of Audit before the Legislature has power to appropriate money for its payment.[r] This objection alone is fatal to the item, without considering the question whether such an appropriation ought ever to be made to counties to defray the expenses of trials for crimes committed within their borders.

'For Marila I. Sharpe, the widow of Reverend Ichabod B. Sharpe, who was killed by the fall of a canal bridge over the Genesee Valley canal, near the village of Canadea, on the twenty-fourth day of June, eighteen hundred and seventy-six, the sum of three thousand dollars as a gratuity.'

This item is objected to and not approved for the reason that Mr. Sharpe was not in the service of the State in any way, and no proof of any kind appears that the bridge was defective or that the accident which resulted in the death of Mr. Sharpe was the result of any negligence or fault of any officer or agent of the State.

'And for the erection of a new group of detached buildings similar to those already erected, for the use of women, the sum of seventy-five thousand dollars.' [Willard Asylum.]

This item is objected to and not approved because it seems to me that the present is no time to commence the erection of new buildings. We have too many under way already, and the heavy burdens resting upon the taxpayers ought not to be increased by the commencement of new ones until more auspicious times.

'For the Buffalo State Asylum for the Insane, to complete the administration building, and wards A, B, C, D and E, and for improving the grounds thereof, and building permanent fences and roadways, the sum of two hundred thousand dollars.'[22]

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[r] Const. 1846, art. 3, § 19, added 1874.

This item is objected to and not approved for the reason that the appropriation is unusually large. The amount appropriated for the same building last year was one hundred and twenty thousand dollars. The disasters and losses among business men during the last year surely indicate that appropriations and taxation should be confined to absolute necessities, and should be diminished rather than increased.

'For the managers of the New York State Lunatic Asylum at Utica, to pay I. C. McIntosh and the heirs of ——— Lobdell, for land taken for the use of the asylum, the sum of sixteen hundred dollars, or so much thereof as may be necessary, to be paid upon the delivery to the Comptroller of sufficient deeds for such land.'

This item is objected to and not approved for the reason that it has already been presented to the Board of Audit, and by them disallowed.

'For the construction of the center building, for plumbing, water and sewer connections and water boiler, for steam heating apparatus and connections, for lowering boiler room, setting boilers with connections and building coal vaults, for brick draining, pavement around buildings, for food car, tramway and hoisting lift and for deficiencies and extras pertaining to the several contracts, the sum of one hundred and thirty-four thousand dollars.'[23]

This item is objected to and not approved for the reasons given for the disapproval of the appropriation to the Willard Asylum, for new buildings, and for the further reason that the expenditures upon the asylum at Poughkeepsie have been lavish and extravagant, to a degree nowhere equaled except in the New Capitol. There is, moreover, a large amount of previous appropriations unexpended, and with this the managers can go through another year with more ease than the people can pay additional taxes for a building and furniture so expensive that the inmates cost the State at the rate of about $5,000 each per annum.

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[22] This item, making an appropriation for the Buffalo Insane Asylum, was not passed over the veto, but an appropriation of $100,000 for the same purpose was made by chapter 336, approved May 25.

[23] This item was not passed over the veto, but an appropriation of $50,000, for the Hudson River Hospital, was made by chapter 336, approved May 25.

'For the Susquehanna Valley Orphans' Home, at Binghamton, for enlarging, building, painting, and repairing building, and for heating apparatus, the sum of ten thousand eight hundred and sixty-six dollars and twenty-five cents.'

This item is objected to and not approved for the reason that it is clearly within the prohibition of section ten of article eight of the Constitution.

'For the Managers of the Central New York Institution for Deaf Mutes at Rome for the erection, heating and furnishing of a suitable building for its use, the sum of thirty thousand dollars; but no part of the sum herein appropriated shall be expended except upon a plan for such building which shall be approved by the Comptroller and the Superintendent of Public Instruction, and upon estimates which will satisfy the Comptroller.'

This item is objected to and not approved for the same reason stated for the disapproval of the item of $75,000 for the Willard Asylum.

'For the promotion of agriculture, the sum of five thousand dollars.'

This item is objected to and not approved for the reason that it appropriates the moneys of the State to aid an agricultural association, and is therefore forbidden by section ten, article eight of the Constitution.

'And for the reconstruction of the buildings on the State fair grounds, at Elmira, destroyed by fire, the sum of five thousand dollars, both of said sums to be paid to the treasurer of the State Agricultural Society, and to be expended under the direction of the executive committee thereof.'

This item is objected to and not approved because it is subject to the same constitutional objection given for disapproving the last-mentioned item.[8]

'For constructing a wagon road on the Indian reservation of the St. Regis Indians, in the county of Franklin, starting from a short road now laid, which runs from the old State road to the reservation, and thence running nearly parallel with the St. Regis river, northerly, to the Canada line, and a branch road, commencing at a point in said contemplated road about midway between its extremities, and running thence easterly to Drum street in the town of Fort Covington, the sum of two thousand five hundred dollars, to be expended under the supervision of Alfred Fulton and Sidney G. Grow, of Hogansburgh, who are hereby appointed commissioners for that purpose, who shall each receive out of said sum three dollars per day for each full day occupied in and about such supervision, but the total compensation of such commissioners shall not exceed the sum of two hundred and fifty dollars; and no part of the sum herein appropriated shall be paid over to such commissioners until they shall have executed a bond to the people of the State of New York, to be approved by the Comptroller, conditioned that they will faithfully discharge their duties as such commissioners, and truly account, under oath, to the Comptroller for all moneys received by them for the purposes aforesaid.'

This item is objected to and not approved for the reason that the Legislature has been forbidden by section eighteen, article three of the Constitution to pass a private or local bill, to lay out, alter, work, or discontinue highways or alleys. More than this, chapter 482 of the Laws of 1875 gives full power to the supervisors to act in the matter if this road be needed.

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[8] Const. 1846, art. 8, § 10, am. 1874.

'For repairing the road across the Onondaga Indian reservation, leading from what is known as the "Castle hotel" in the town of Onondaga, to a point intersecting the road leading by the house of Edwin Clark, a distance of about one and one-eighth miles, the sum of five hundred dollars, to be expended under the supervision of John Kelly of said town who is hereby appointed a commissioner for that purpose, who shall receive out of said sum three dollars per day for each full day occupied by him in the discharge of such duty, but for not exceeding fifteen days in the aggregate, and who shall execute to the people of this State a bond to be approved by the Comptroller, for the faithful discharge of his duties as such commissioner.'

This item is objected to and not allowed for the same reasons given for disapproving the last mentioned item.

'The sum of one million dollars is hereby appropriated toward the erection of the New Capitol building, which shall be paid by the Treasurer, upon the warrant of the Comptroller, to the order of the New Capitol Commissioners, as they shall require the same.'[24]

This item is objected to and not approved. The New Capitol is a great public calamity. At its commencement the people of the State were assured that it would be completed for four millions of dollars. There have already been expended upon it $7,723,695.16. No reliance can be placed upon any estimate which can be obtained as to the cost of completing it. There is no probability that it can be fully finished according to the original plans for less than from fifteen to twenty millions of dollars. If the taxpayers of the State had not been deceived, if they had supposed that the whole expenditure would reach what it has already reached, it is not likely that they would ever have permitted the commencement of the work. It is without a parallel for extravagance and folly. It covers more than three acres of ground. Its proportions are enormous. It is more than double the size needed for a Capitol. At every step of its progress one idea has held supreme control, which was to make its exterior a great and magnificent architectural display, which should daze the eyes of all beholders, without the least regard to the interior arrangements for practical use. Indeed, but for the improvements in the interior plans made by the present commissioners, the two houses of the Legislature would scarcely have been able to occupy it at all. Even now, after they have made all the changes for the better, possible in a building already spoiled, it can only be used with very great inconvenience and discomfort. The Legislative chambers must be reached by ascending to a height of sixty-two feet from the first step of the main front; and this extraordinary elevation must be attained either by long stairways, or else by steam power and elevators, such as are used to reach the fifth or sixth stories of first class hotels. The halls are long, damp and dark, the rooms badly lighted and ventilated. In cloudy weather very few of the rooms can be used without gaslight during the day as well as the night. When this great and useless structure can be or will be completed it is idle to conjecture. When we consider the unlimited expense of heating and lighting three acres of a building 108 feet high, of its cleaning, care and attendance, with six or eight steam engines and their engineers and firemen, no one can feel in any haste to have it completed. The best estimate which I have been able to obtain of the amount of these expenses makes it about $250,000 per annum.

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[24] This item was not passed over the veto, but an appropriation of $500,000 for continuing work on the New Capitol was made by chapter 336, approved May 25.

In making the appropriation the Legislature directs the commissioners to 'build and complete the exterior of the New Capitol building in the Italian renaissance style of architecture adopted in the original design, and according to the style upon which the building was being erected prior to the adoption of the so-called 'modified design.'

There are very great differences of opinion among eminent architects as to which style should be adopted. The direction of the Legislature compels the commissioners to return to the former style, and I understand that the change will involve a loss of at least three hundred thousand dollars.

The New Capitol, like all the other public buildings upon which the State has recently expended such extravagant amounts of money, was the outgrowth of a vicious system of finance and of the folly and madness which accompanied it. The inevitable disasters which always come of such follies are now upon us in full force, and are everywhere felt with crushing effects. They admonish us if we proceed at all to do it with moderation. It is surely no time to increase appropriations when the power to pay taxes is so greatly diminished. Yet on examination of the supply bill it will be found that in this period of financial embarrassment the appropriations for all the public buildings and consequently the taxes to be levied for them are very largely in advance of those of the preceding year. It is surely time to pause in this career. All prudent business men, in the management of their own affairs, move more slowly, and thousands are unable to move at all under present circumstances. However convenient or desirable it may be to complete the Capitol and the other public buildings, we can do without them for a time as we have heretofore. They are not absolute necessities.

In any event it seems better to wait a year even if it be finally decided that this building must be completed, to the end that it be fairly considered whether some plan may not be devised by which better accommodations may be secured at less expense than now appears inevitable.

'For the construction of a draw in the bridge over the navigable channel of the Oneida river, at Brewerton, between the counties of Oswego and Onondaga, the sum of seven thousand five hundred dollars.'

This item is objected to and not approved for the reason that there are no moneys in the treasury properly applicable to the building of this bridge, and there is too much reason to apprehend that the revenues will not be sufficient to pay the expenses of running the canals, and it may be assumed as certain that they will not be sufficient for that purpose and for the building of new bridges in addition.

'For the construction of an iron bridge over the Clark and Skinner canal, at Scott street, in the city of Buffalo, the sum of three thousand dollars, or so much thereof as may be necessary.'

This item is objected to and not approved for the same reasons given for disapproving the last mentioned item.

'For rebuilding bridges over the State ditch on Main and Delaware streets, in the village of Tonawanda, Erie county, and for building a bridge over said ditch on Fletcher street, in said village, the sum of two thousand dollars, or so much thereof as may be necessary.'

This item is objected to and not approved for the reasons given for disapproving of the appropriation for the construction of the draw in the bridge over the Oneida river at Brewerton.

'For the construction of a lift bridge over the Oswego canal in the city of Syracuse, on Salina street, at its intersection with Bridge street, in place of the bridge now over said canal at that point, which was authorized by chapter three hundred and eighty-two of the Laws of eighteen hundred and seventy-four, the sum of twelve thousand dollars or so much thereof as may be necessary.'

This item is objected to and not approved for the same reasons given for disapproving the item last mentioned.

'For the construction of a foot bridge over the Erie canal at Mud Lock, at the junction of the Cayuga and Seneca canals, the sum of five hundred dollars, or so much thereof as may be necessary.'

This item is objected to and not approved for the same reasons stated for disapproving the item last mentioned.

'For the construction of three bridges over the State ditch in the village of Tonawanda, in Niagara county, at Marion street, Oliver street and Van Vort street, the sum of two thousand and five hundred dollars, or so much thereof as may be necessary.'

This item is objected to and not approved for the same reasons stated for disapproving the item last mentioned.

'For the construction of a swing or lift bridge over the Erie canal in the village of Brighton, Monroe county, in the place of the bridge now over said canal at that point, the sum of four thousand five hundred dollars, on condition that the approaches to said bridge and the help necessary to tend it be provided by the locality where the said bridge is situated.'

This item is objected to and not approved for the same reasons stated for disapproving the item last mentioned."

The items were not passed over the veto.

May 17. To the Senate:

**Veto of a bill entitled "An act to amend chapter 667 of the Laws of 1870, entitled 'An act to incorporate a Brooklyn Library Building Fund Association of the Eastern District.'"**

"The second section of this bill provides that where subscribers shall have forfeited the stock for which they have subscribed, in accordance with the provisions of this act, they shall, in no case, be liable for the unpaid assessments or balance on such stock.

It cannot be denied that this is a direct violation of section ten of article one of the United States Constitution, which provides that no State shall pass an act impairing the obligation of contracts.

A subscription for stock has always been regarded in law as a contract, and the party subscribing has always been held liable to fulfill the obligation he assumed in the subscription. This being so, the present act is clearly in derogation of the provision of the Constitution above mentioned, and is beyond the power of the Legislature."

The bill was not passed over the veto.

May 17. To the Senate:

**Veto of a bill entitled "An act to annul or repeal the incorporation of the Clyde and Rose Plankroad Company."**

"I am informed that the supervisors of the county of Wayne have already extended the charter of the plank road mentioned in this bill, and that the effect of this act, if it be made a law, is simply to reverse the decision of the board of supervisors in the same matter. The policy of the law is against the interference of the Legislature in any local matters which are properly the subject of action of the board of supervisors, and it is especially improper that the Legislature should interfere with such matters where the local boards of supervisors have already made a decision in the premises. For these reasons I am unable to approve of this bill."

The bill was not passed over the veto.

May 17. To the Senate:

**Veto of a bill entitled "An act to authorize the trustees of Skaneateles, in the county of Onondaga, to sell certain real estate, and to raise money by tax for building an engine house, and for other village purposes."**

"This bill is objectionable as special legislation to accomplish an object provided for by general laws. The power to convey the real estate mentioned is already in the village charter, and the other acts sought to be authorized may be done under the sanction of the board of supervisors of Onondaga county, in accordance with the provision of chapter 482 of the Laws of 1875."

The bill was not passed over the veto.

May 17. To the Assembly:

**Veto of a bill entitled "An act to amend chapter 476 of the Laws of 1847, entitled 'An act to provide for the incorporation of villages,' so far as the same relates to the village of Niagara Falls in the county of Niagara."**

"On principle, this act is objectionable, because it seeks to accomplish a local and special object by a limited amendment of the general law.

A bill of precisely the same character in regard to the village of Niagara city, in the county of Niagara, was vetoed some days since on the same ground.

Besides this general objection to bills of this class, the present act is open to the further objection that it seeks by special legislation to accomplish an object already generally provided for by chapter 482 of the Laws of 1875, which gives full power to boards of supervisors to authorize, in proper cases, the action proposed to be taken under the present bill, by the village authorities of the village of Niagara Falls."

The bill was not passed over the veto.

May 17. To the Assembly:

**Veto of a bill entitled "An act granting certain powers to the trustees of the Harpersville Cemetery Association, in the town of Colesville, Broome County, New York, and the supervisor of said town."**

"This bill is a piece of special legislation and is unnecessary, because the supervisors of Broome county are authorized by chapter 482 of the Laws of 1875, to take the same action which the Legislature seeks to take by the enactment of this bill."

The bill was not passed over the veto.

May 18. To the Senate:

**Veto of a bill entitled "An act supplemental to chapter 335 of the Laws of 1873, entitled 'An act to reorganize the local government of the city of New York.'"**

"The spirit of our institutions is at war with every effort of the minority to defeat the will of the majority in any locality through legislative means. When we deny self-government to any section of the people we belie the faith and teachings of our fathers. Equal representation is prerequisite to the right of taxation. Without it legislative levies on localities are simply oppressive. This conceded doctrine is nowhere more scrupulously maintained than in our Constitution, which provides that the Legislature shall, on the completion of every census, award to each part of the State the representation to which its population entitles it. For nearly two years this mandate of our highest law has been defied and disobeyed. A Legislature morally, if not legally, irregular, assumes to revolutionize the local law in a city of a million while denying to that city the representation which is its right. Upon the final passage of the present bill in the Assembly, 78,000 people in Putnam, Wayne, Schuyler and Cortland counties by their representatives, cast four votes for it, while the 96,000 people of the twentieth New York district were allowed to cast but one against it. It is neither justice nor common sense that the representatives of 31,000 people in two rural counties, without interest in this act, should nullify the votes of 170,000 inhabitants of two New York districts against it, whose personal rights are committed to its care.

The first objection to its enactment is that while it professes to provide for all the great interests and wants of the people of the city of New York, it is passed when the city is not fully and fairly represented in the Legislature, as the Constitution requires that it should be. By the omission of the Legislature to make such an apportionment of the Senators and Members of Assembly as is required by the Constitution,[t] the city of New York is deprived of the presence and votes of at least seven additional representatives to which she is entitled in the two houses of the Legislature, and this legislation is imposed upon it in the absence of such representation.

In the next place, of the twenty-one Members of Assembly and five Senators, making twenty-six in all, from the city, nineteen opposed and voted against the bill. Of the forty-seven Senators and Members of Assembly from the city, Long Island counties, Westchester, Richmond and Rockland, immediately surrounding the city and acquainted with its affairs, only fourteen voted for this bill, whilst all the residue (thirty-three) voted against it. The seventeen members of Assembly who voted against the bill represented 826,454 of the 1,045,223 inhabitants of the city, as shown by the last census. It is perfectly clear, therefore, that this bill, whether good or bad, is forced upon the people of the city against their will, by the representatives of the interior, western and northern parts of the State, who know least of its affairs.

If local self government is more than an empty name, such legislation should not be. Were there no other argument against the bill than this, a sense of duty to the principles of popular representation and the Constitution I am sworn to follow, would forbid my approval of this or any similar measure forced on an unwilling people whose proper voice is silent in the legislative halls. I cannot admit the right of the Legislature to regulate the municipal affairs of New York, while refusing it its fair apportionment of members in either house.

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[t] Const. 1846, art. 3, §§ 4, 5.

Twenty years ago the experiment was undertaken of withdrawing from the city of New York the powers of local government which it held under its charter, and supplying their place with acts of the State Legislature. The history of this legislation is, with few exceptions, one long record of confusion, robbery and wrong. Over 2,300 laws relating to the city, of which nearly 600 make or modify governmental powers, have been precipitated upon the statute books within that time. Laws heaped on laws, original, repealing, amendatory and re-enacting, make a mingled heap from which lawyers shrink confounded, and judges turn at fault. Our highest court has held one branch of New York city law utterly beyond interpretation or construction.

Nor is this all. Within the shadow of this mighty stack of statutes great combinations have been formed for public plunder and private wrong. Sheltered by ambiguous law, the conspirators have safely fattened on spoils wrenched from the plundered poor.

In 1857, the population of the city was 700,000, and its debt $18,740,188; in December, 1876, its population was 1,045,000, while the debt was $121,178,450. The population within nineteen years has increased fifty per cent, and the debt six hundred per cent. Within the same period taxes have been drawn from the people of that city to the amount of hundreds of millions of dollars, and the many disgraceful passages in its municipal government prior to 1872 are too well known to require repetition. In the last mentioned year, the outraged people of the city rose and demanded reform, and did what they could to effect it within the limited powers which the Legislature had deigned to leave them.

The bill now in question has been claimed as a measure of reform. I understand that as it was originally prepared it was entitled to be so regarded; but those who drew it, since its manipulation by the Legislature, are scarcely able to recognize its original features, and disclaim responsibility for it in its present shape. After a very careful examination of its provisions, and listening attentively to all the discussions of its merits and demerits, by its friends and opponents, who have appeared before me, it seems to me a return to the old and bad practice of partial legislation, not to attain reform in municipal government, but to effect political and personal ends, and a fresh distribution of patronage and power for the benefit of individuals.

Section 3 of the bill provides for the election of a mayor on the first Tuesday in April in every second year, who shall enter on the duties of his office on the first of May succeeding his election. Section 4 provides that whenever the president of the board of aldermen becomes acting mayor, in case of a vacancy in the mayor's office, he shall continue to act as mayor until the first day of May succeeding the next election at which a mayor can be chosen. It is apparent, therefore, that if a vacancy should occur between the first Tuesday in April in any election year and the following first of May, the mayor-elect and the president of the board of aldermen would both be mayor for the next two years. The bill gives each of them a clear title to the office.

Section 7 takes away from the board of aldermen the power of confirmation of heads of departments and the chamberlain.

These officers in the city of New York are each charged with the performance of most important duties, with great powers and responsibilities. To give to the mayor sole and absolute power to appoint and remove them is contrary to the whole theory of our government, and might be very dangerous to all public interests, if the office of mayor should chance to fall into bad hands.

Section 9 abolishes the present commission of public parks, and declares that hereafter the head of the department of public parks in said city shall be an officer called the commissioner of parks, who shall hold office four years and receive a salary of $5,000.

The officers of the present department of public parks have generally discharged their duties to the entire satisfaction of the public. They serve without pay, and there can be no apparent object in legislating them out of office, unless it be to place undue power in the hands of some one man.

Section ten provides that the department of public works shall have charge and control of the construction, maintenance and management of all the public squares, parks and places, and their adjoining sidewalks; while section eleven declares that all the powers now possessed by the department of parks not continued in that department by this bill, shall be turned over to the department of public works. The sixth subdivision of the thirteenth section further declares that the department of public works shall have control of the construction, erection, maintenance and care of all buildings now belonging to or hereafter to be erected for the city, except those of the police, fire, charity and educational departments. By comparing these two sections it appears that the act, either intentionally or by accident, transfers to the department of public works absolute control of all city buildings in the parks. This provision will certainly result in conflict of authority between these two departments. It seems impossible that such radical changes in so important a department should be countenanced. It is very essential to the efficiency of the park department that it should have exclusive and ample authority, not only about the grounds, but over the buildings situated within the grounds of which they take charge. I understand that in Central park alone there are buildings used for park purposes, for housing animals and curiosities, for restaurants and similar purposes, the control of which is an absolute necessity to the proper government and regulation of the park. The department of public works has no other jurisdiction or control over the parks or any part of them, and the regulation of these park buildings is entirely foreign to the purposes of its organization. There are, besides these, subject to the sweeping transfer of the bill, certain buildings erected by the city and intended as an art gallery and a museum in Central park and in Manhattan square. The statute providing for the erection of these buildings vests in the trustees of collections designed to be placed therein, the care and control of the buildings. This bill places these buildings also under the control of the commissioner of public works, and the effect of the transfer will probably be to deprive the city of the benefit of the collections intended to be placed there.

Again, the twelfth section provides that the board of street opening and improvements shall, in addition to their present powers, have exclusive power to acquire title to any of the streets, roads, avenues and public places in said city.

This section, if enacted, will at once become the basis of countless litigations. Its strict language authorizes the board to acquire from the city the title to existing streets only; it gives no power to acquire title to land required for streets, nor any grant of the powers necessary to the exercise of such authority. As I understand existing statutes, the present powers of this board enable them to acquire land for the purposes mentioned south of Fifty-ninth street, but they have no such power above Fifty-ninth street, and this bill gives them none, for it must be remembered that a statute conferring any such power is in derogation of private right, and would receive a strict construction from any court. The attempt, under this crude and general section, to acquire necessary lands for street purposes would, undoubtedly, result in complicated litigations, with a strong probability that the city would be ultimately unsuccessful.

Another very serious defect appears upon comparison of the tenth section with the first subdivision of the fourteenth section. The former provides that the department of public parks shall have charge of 'the sidewalks immediately adjoining any of said public parks, squares and places.' This clearly restricts the jurisdiction of that department to the sidewalk immediately bordering on any given park or square. The latter provision declares that the department of public works shall have charge of 'the streets, roads, avenues and places of the city, not including any of such works within any park or place, or in or on the sidewalks of any street, road or avenue immediately adjoining any park or place.' This excludes from the control of the public works department both sidewalks of every street, bordering on a public park or place. The tenth section having given the department of parks control of only the sidewalk adjacent to the public square, it is clear that one sidewalk on every street contiguous to any public square is utterly beyond the jurisdiction of anybody.

One of the gravest objections to the bill is its attempt to transfer the control of the department of docks to a bureau in the department of public works. There is no greater or more important interest connected with the commerce of the city with all parts of the world, than its immense line of docks, wharves and slips extending already a distance of about fifteen miles around the city, and destined to extend much further. The proper management of this immense line is of the utmost importance to the commercial interests of the city; it lies at the very entrance of the great commercial operations of the metropolis. There is no department requiring a more honest and able administration. I am informed that there is no complaint of the faithful and efficient manner in which the affairs of that department are conducted by the present commission, and yet the bill proposes to abolish the commission, and to transfer all its powers and duties to a subordinate officer to be appointed by the commissioner of public works, and to be called an 'engineer of docks.' The impropriety of such a change must be apparent to every one. In all the discussion which has taken place before me, no one has attempted to defend this portion of the bill. It is moreover alleged to be in violation of the Constitution. Section 2 of article 10 of the Constitution provides that all city officers whose election or appointment is not provided for by the Constitution shall be elected by the electors of the city, or appointed by such authorities thereof as the Legislature shall designate for that purpose. This bill delegates extensive governmental powers affecting private property not to any city officers elected by the people or appointed by any designated city authority, but by a bureau, whose chief officer is called the engineer of docks. No specific duties and no defined powers are devolved either on the bureau or its head, although by implication the whole governmental power now existing on the subject is sought to be given to an inferior officer of a department of the city government. If he has this power he is a city officer, and constitutionally should be elected or appointed as above; if he has not this power, the control of this vast interest is nowhere and is not committed to anybody.

Another expensive change proposed by this bill is, that in the event of its becoming a law the department of public works, which is compelled to do its work upon contract furnished on sealed bids, would be unable to receive or use the services of prisoners and paupers in the erection of buildings necessary for the purposes of the department of charities and correction. Such buildings, during the last few years, have been erected at a merely nominal cost to the city, by utilizing such labor.

This bill, if enacted, would compel the treasury to pay for outside labor upon such erection, while the classes named would be supported from the same treasury in idleness.

Section twenty provides that the head of the department of public charities and correction in said city shall hereafter be two officers, called the commissioners of public charities and correction. The commissioner who was president of said department on the 1st day of March, 1877, and the other having the shortest term to serve, shall be the commissioners. The third commissioner now existing is legislated out of office.

Section twenty-one of the bill provides that the fire department of the city shall hereafter have for its head a commissioner to be known as fire commissioner of the city of New York, that the commissioner who was president of the said department on March first last shall be the head of the department until the expiration of his present term of office, or until a vacancy occurs as now provided by law.

Section twenty-five enacts that the head of the police department shall be composed hereafter of two persons, and declares that the commissioners who were president and treasurer of said board on March first last shall continue to be such commissioners, while the office of the other commissioners shall cease after the passage of this act.

Of these three provisions it is hardly necessary to say that they are all in conflict with section 2 of article 10 of the Constitution. The officers of these three departments can constitutionally only be appointed by the electors of the city, or some city authorities designated by the Legislature for that purpose. They were elected as members of boards in which they exercised far less power than those delegated to them by this bill. The effect of these three sections is nothing more or less than a legislative election of the officers named to new positions created by this act.

The same question has been substantially heard and settled by the Court of Appeals in several important cases, notably in The People against Albertson (55th New York, 56); Warner against the People (2d Denio, 272); The People against Draper (15th New York, 540), and numerous others.

In any event, if this bill should become a law, these changes will become fruitful sources of litigation. Besides the constitutional question, the provision as to the fire department has two glaring defects.

First. It legislates out of office two of the present commissioners, and legislates into office as sole autocrat of the department, the present president of the commission, already under serious charges of official malfeasance, giving him absolute control of the department.

Second. It gives to the fire department the incongruous duty of supervising buildings, now devolving upon the commissioner of buildings, when their duty, above all others, needs to be confined to the special object for which they are organized, to wit — the extinguishment of fires.

Section twenty-nine of this bill declares that the counsel for the corporation shall, in virtue of his office, be public administrator of the city of New York. This section is plainly unconstitutional. The public administrator has been a city officer of New York since 1815, and in all that long period very few changes in his powers and duties have been made. The office is within the meaning of the constitutional provision above cited, and to make the corporation counsel public administrator is simply to legislate an individual into an office.

It is needless to go further into the details of this bill. Almost every section of it is defective, abounding with inconsistencies, and crude or unconstitutional provisions. Claimed to be in the interest of economy, it is very evident that its imperfections are likely to cause much more loss than gain in that direction.

I abstain from any discussion of the subject of a spring election. There are wide differences of opinion between good men upon that question. It must be borne in mind that the experiment was tried for many years, but it was abandoned under the general belief that its advantages were not sufficient to justify the unavoidable expense, excitement and labor attending it. More recently a December election was tried for a short time and then abandoned for the same reasons.

The great need of the city is a charter framed upon sound and comprehensive principles for the protection of the rights and interests of the people, without regard to office holders, office seekers or schemes of personal profit. When such a charter shall be adopted, shall restore to the people of the city the right of self-government without legislative interference in its local affairs, shall sweep away the huge mass of partial and corrupt legislation under which the city has been buried, shall provide for the funding of the immense debt at a moderate rate of interest, and forbid the creation of any more, we may expect a brighter and better day for the city. Until then all such crude and imperfect acts as the one herewith returned will only add to the confusion and uncertainty which now prevails."

The bill was not passed over the veto.

May 18. To the Senate:

**Veto of a bill entitled "An act regulating the payment of school moneys apportioned to the several counties of the State."**

"Chapter 567 of the Laws of 1875, provides as follows: 'The moneys so annually apportioned by the Superintendent shall be payable on the first day of April next, after the apportionment to the treasurers of the several counties, and the chamberlain of the city of New York, and the said treasurers and chamberlain shall apply for and receive the same as soon as payable.'

Chapter 760 of the Laws of 1873, provides as follows: 'And every county shall pay its quota of State taxes into the State treasury, the one-half on or before the fifteenth of April, and the other half on or before the first day of May, in each and every year hereafter.'

The total apportionment of the several counties for 1877 from the school tax and school fund is $3,043,125, and this sum is payable on April first, and is derived from taxes none of which are received before April fifteenth. I need hardly remark that this is impossible.

There seems no good reason to make the support of the schools a first lien upon the revenues, and it is not improbable that taxes may be received so slowly at times that the withholding of the entire school tax as provided by this bill, would leave the treasury bankrupt.

Out of sixty counties but five raise more by tax for the school fund than is apportioned to them. One of these, New York, raises $1,503,983.85, and is apportioned but $553,926.75. It contributes nearly $1,000,000 to the support of schools in the interior of the State. This money should be in the treasury before permission is given to draw against it. I am firmly convinced that existing laws furnish as perfect a remedy as can be devised with safety in the matter, and I believe the enactment of this bill would be a dangerous innovation upon the long settled practice of the State."

The bill was not passed over the veto.

May 18. To the Senate:

**Veto of a bill entitled "An act to amend the Revised Statutes in relation to the assessment and collection of taxes."**

"The object of this bill is simply to add to the section amended the words 'and bonds and mortgages, notes or other securities, wherever executed, payable or situated, owned by a resident of this State.' I suppose it to be true that every dollar of property subjected to assessment and taxation by the amendment proposed, is already liable to taxation under the law as it now stands. If it be necessary to recite one class of securities for personal property as especially liable to taxation, every other class of investments should be likewise particularized. The inference drawn from the special mention of bonds and mortgages in the amendment is that the present law does not authorize the State to levy taxes upon the property which that class of security represents. This is an erroneous view, and the amendment would simply be a sort of barnacle on the statute."

The bill was not passed over the veto.

May 18. To the Assembly:

**Veto of a bill entitled "An act authorizing the inhabitants of school district Number Eight in the town of Pike, county of Wyoming, to sell a portion of their school house site."**

"The power sought to be conferred upon the school district in question by this act may be granted to it by the board of supervisors of Wyoming county, in accordance with the provisions of chapter 482 of the Laws of 1875. If the authority is to be given on principle it should come from the supervisors and not from the Legislature."

The bill was not passed over the veto.

May 18. To the Assembly:

**Veto of a bill entitled "An act to change the bulkheads and pier lines of Newtown creek, in the port of New York."**

"It is self evident that any alteration in bulkhead and pier lines, such as is attempted by this bill, should be made, if at all, with very great care and accuracy. An examination of the lines proposed to be established, and their description and monuments, show the want of this care. The bulkhead and pier lines of Newtown creek were established by chapter 763 of the Laws of 1867, after careful consideration by a commission appointed by chapter 121 of the Laws of 1857. Accurate maps of these lines are filed in the office of the Secretary of State. I am advised that since their establishment considerable encroachments have been made beyond them by various riparian owners, as appears from a comparison of the map accompanying this bill and the original now filed in the office of the Secretary of State. The object of this bill is apparently to so change the former lines as to embrace and legalize these encroachments.

Without stopping to discuss the propriety of such an enactment, it is sufficient to say that neither the map accompanying this bill, nor the description in the bill itself, locates the lines proposed with proper accuracy. No distances or courses are given, and the initial and terminal points are vaguely described, the lines not being located by proper offsets from known monuments or points. It is very doubtful if a competent engineer could accurately lay out the lines proposed, or locate bulkheads under them.

These views, which are corroborated by the State Engineer, after careful examination of the provisions of this bill, render it my duty to disapprove it without regard to the question whether its action is or is not desirable. There is an additional reason for objecting to the bill, in the fact that a commission was appointed by the President of the United States to revise the lines of the Brooklyn side of the New York Harbor in accordance with the request of the Governor, under concurrent resolutions of the Senate and Assembly, passed in 1872. The report of the commission as to the proper location of that part of the lines mentioned in the present bill has not yet been received, and until it is made, it seems hardly proper to forestall their action by fixing in a private bill any portion of the boundaries upon which the commission has been instructed to report."

The bill was not passed over the veto.

May 21. To the Senate:

**Veto of a bill entitled "An act in relation to proceedings in the Surrogate's Court of the county of Erie, and to the powers and jurisdiction of the surrogate thereof."**

"This bill confers upon the surrogate of Erie county the equitable jurisdiction over certain trustees now residing in the Supreme Court. A similar act applying to the entire State was returned to the Assembly without approval some time since. The reasons then given for the disapproval of that bill apply with equal force to the present one. It has not been shown that Erie county is in greater need of such an enactment than other portions of the State.

Aside from these reasons, the present condition of the law of legal proceedings in this State is such as to render it unwise, in my judgment, to enact special local laws upon subjects certain to be treated generally within a very short period."

The bill was not passed over the veto.

May 21. To the Senate:

**Veto of a bill entitled "An act to repeal chapter 74 of the Laws of 1866, entitled 'An act to create a Metropolitan Sanitary District and Board of Health therein for the preservation of life and health, and to prevent the spread of disease, so far as relates to Queens County, and to provide for the appointment of boards of health in the several towns of Newtown, Flushing and Jamaica, in said county, and defining their powers and duties.'"**

"The locality mentioned in this bill and subject to its provisions, has been for many years a part of the Metropolitan Sanitary District, and subject to the control of its health authorities. This act seeks to take the district mentioned out of the Metropolitan Sanitary District, by repealing the provisions of the Metropolitan Health act, as far as it applies to Queens County.

It does not appear that any particular hardship to this locality has been wrought by the operations of the act repealed, while the proximity of this part of the metropolitan district to the city of New York renders it very possible that it may, at some time, be important to the sanitary welfare of the inhabitants of the city, that its health authorities should have control over part, if not all, the territory now sought to be taken from their jurisdiction.''

The bill was not passed over the veto.

May 22. To the Assembly:

**Veto of the following items in a bill entitled "An act making an appropriation to pay the expenses of the collection of tolls, superintendence, ordinary repairs and maintenance of the canals for the fiscal year commencing on the first day of October, 1877," which became chapter 309, passed May 22.**

" 'For raising road-bed in the town of Fort Ann, pursuant to chapter five hundred and fifty-four of the Laws of eighteen hundred and seventy, the sum of two thousand dollars, which work may be done by the Canal Commissioner in charge through his superintendent or by contract in his discretion.'

This item is objected to and not approved for the reason that the work is not absolutely necessary, and the canal revenues are not likely to be sufficient to warrant the doing of any work that can safely be dispensed with.

"For the construction of an iron bridge with sidewalks and suitable abutments, with passage for towing on both sides of the canal, over the Erie canal at Austin street, in the city of Buffalo, ten thousand dollars, or so much thereof as may be necessary, the same being authorized by chapter one hundred and eight of the Laws of eighteen hundred and seventy-four, providing all the requirements of said act be complied with.'

This item is objected to and not approved for the same reasons given in objecting to the last preceding item.

'For the construction of a lift bridge over the Erie canal at Exchange street, in the city of Lockport, the sum of six thousand dollars, or so much thereof as may be necessary.'

This item is objected to and not approved for the same reasons above stated.

'For the construction of an iron bridge over the Mohawk basin at Arch street, in the village of Green Island, the sum of four thousand dollars, or so much thereof as may be necessary.'

This item is objected to and not approved for the same reasons above stated.

'For the construction of an iron bridge over the Champlain canal at Ship street, in the city of Cohoes, the sum of three thousand five hundred dollars, or so much thereof as may be necessary.'

This item is objected to and not approved for the same reasons above stated.

'For the construction of an iron bridge to replace the wooden structure over the feeder at Main street, in the village of Fort Edward, the sum of one thousand five hundred dollars, or so much thereof as may be necessary.'

This item is objected to and not approved for the same reasons above stated.

'The sum of three thousand five hundred dollars is hereby appropriated, or so much thereof as may be necessary, for the erection of a substantial iron bridge across the Seneca river, now used by the State as the Cayuga and Seneca canal. The Canal Commissioner of the middle division is hereby instructed to erect said bridge at any point on said Cayuga and Seneca canal west of Locust street, in the village of Waterloo, Seneca county, whenever the board of trustees and president of the village of Waterloo, together with the supervisors of the towns of Fayette and Waterloo, shall, in writing, designate the location of said bridge, and shall have filed such designation in the county clerk's office of Seneca county, and shall have filed a copy, with the clerk's certificate of said filing, on the Canal Commissioner in charge.'

This item is objected to and not approved for the same reason above given for objecting to the appropriations for other bridges, and for the further reason that the State is not bound to build a bridge over the Seneca river.

'For the construction of an iron lift bridge over the Erie canal at Brockport, the approaches to said bridge and the help necessary to tend to it to be provided by the village of Brockport, four thousand five hundred dollars, or so much thereof as may be necessary.'

This item is objected to and not approved for the same reasons above stated.

'For erecting a bridge over the Champlain canal on the road leading from Waterford to Cohoes, and near the cemetery, in the town of Waterford, Saratoga county, the sum of one thousand dollars, or so much thereof as may be necessary.'

This item is objected to and not approved for the same reasons above stated.

'For removing an iron bridge from Brockport, and erecting the same over the Erie canal, between Earle and Kent streets, in the village of Palmyra, the sum of eight hundred dollars, or so much thereof as may be necessary.'

This item is objected to and not approved for the same reasons above stated.

'The sum of four thousand five hundred dollars is hereby appropriated for the construction of a lift iron bridge over the Erie canal, in the town of Brighton, Monroe county, in place of the present bridge, provided that the expense of making the approaches and help necessary to attend the same when erected shall be paid by the people of that locality.'

This item is objected to and not approved for the same reasons above stated.

'For building approaches to the bridge over the Erie canal at Averill street, in the city of Rochester, the sum of two thousand dollars, or so much thereof as may be necessary, providing that the owners of lots on said street release the State from damages that may be inflicted on said streets by the construction of such approaches.'

This item is objected to and not approved for the same reasons above stated.

'For the expense of the collection of tolls, superintendence, maintenance and repairs of the Chemung canal for the remainder of this fiscal year, the sum of six thousand dollars, or so much thereof as may be necessary, in addition to the sums now authorized by law for that purpose.'

This item is objected to and not approved because it is covered and sufficiently provided for under section four of this act.

'For paying the expenses of opening and operating the Crooked Lake canal during the present season, provided the Canal Board shall deem it advisable so to do, the sum of three thousand dollars, or so much thereof as may be necessary, and provided the Canal Board believe the same to be for the interest of the State, and shall authorize the construction of the same.'

This item is objected to and not approved for the reason that the Crooked Lake canal has been practically closed for a long time; there was no navigation upon it during the last year. I am informed it cannot be opened and made navigable for less than about twenty-five thousand dollars. The tolls received on the canal in 1875 amounted to only thirty dollars and forty-eight cents. The money appropriated in this item, if used, would be wasted.

'For expenses of the collection of tolls, superintendence and repairs of the Chenango canal for the remainder of the fiscal year, the sum of six thousand dollars, or so much thereof as may be necessary, in addition to the same now authorized by law for that purpose.'

This item is objected to and not approved for the same reasons given for the disapproval of the item of six thousand dollars for the collection of tolls, superintendence, maintenance and repairs of the Chemung canal above.

'For paying the expenses of the collection of tolls, superintendence and all repairs of the Black River canal for the fiscal year, the sum of twelve thousand dollars.'

This item is objected to and not approved for the same reasons above stated.

'The sum of eighteen thousand dollars appropriated by chapter eight hundred and fifty of the Laws of eighteen hundred and seventy-two, for the construction of a dam across the Moose river at the old Brown Tract Forge, and reappropriated by act chapter three hundred and eighty-nine of the Laws of eighteen hundred and seventy-four, is hereby reappropriated for the same purpose, subject to the provisions of said acts, and the Superintendent of Public Works or the Canal Commissioner in charge, is hereby empowered to take and appropriate any lands not released under said acts which may be required for the purpose of building said dam and bringing the proposed reservoir into successful use.'

This item is objected to and not approved for the reason that the money reappropriated is not in the treasury, it having been diverted for another purpose, by chapter four hundred and twenty-five of the Laws of eighteen hundred and seventy-six.''

The items were not passed over the veto.

May 22. To the Assembly:

**Veto of the following item in a bill entitled "An act making an appropriation to pay certain awards made by the Canal Appraisers, and to pay counsel employed on behalf of the State; also reappropriating money to pay certain certificates of indebtedness outstanding," which became chapter 310, passed May 22.**

"'The sum of eleven thousand seven hundred and forty-one dollars, being the unexpended balance of one hundred and seven thousand and four dollars and three cents, appropriated by chapter two hundred and sixty-three of the Laws of eighteen hundred and seventy-five, entitled "An act to authorize the tax of one-fifth of a mill per dollar of valuation for the payment of the awards of the Canal Board and of the Board of Canal Commissioners, and to pay certificates of indebtedness and interest now outstanding," passed May twelve, eighteen hundred and seventy-five, being for the payment of the certificates issued for the work done on the Erie canal, and also the unexpended balance of twelve thousand nine hundred and seventy-three dollars and eight cents, appropriated by the same act to pay the interest on such certificates of indebtedness, and the interest thereon.'

These items of appropriation are for a dam known as Cazenovia dam, which is claimed on part of the State to have been for the benefit of private individuals, and payment is resisted by the State on that and other grounds. The legality of the claim is in litigation, and no appropriation to pay it is proper unless a decision is made by the court fixing the liability of the State."

The item was not passed over the veto.

May 22. To the Assembly:

**Veto of a bill entitled "An act to amend chapter 330 of the Laws of 1850, entitled 'An act to reincorporate the village of Little Falls by the name of Rockton,' and the laws amendatory thereof."**

"I suppose all the matters regulated by this bill to be capable of adjustment under the general laws of the State in relation to firemen in villages. The provisions of those general acts are comprehensive and well considered, and to them all village authorities should have recourse rather than to legislative interference."

The bill was not passed over the veto.

May 22. To the Assembly:

**Veto of a bill entitled "An act to prohibit the interment of the dead in the burial ground belonging to the Society of the First Methodist Episcopal Church, of the town of Carleton, Orleans county, located at Kuckville in said town, and to authorize the removal of the dead from said ground."**

"The action sought to be taken by this bill is unnecessary, because it comes within the powers granted to boards of supervisors by chapter 482, of the Laws of 1875.

The bill, upon its face, seems to be simply a legislative exercise of power belonging to the boards of supervisors, and, if it is not, the proper course for the parties interested is to seek an amendment of the general law and not special legislation for their own case."

The bill was not passed over the veto.

May 22. To the Assembly:

**Veto of a bill entitled "An act in relation to the First Society of the Methodist Episcopal Church, in the village of Watkins, Schuyler county, New York.**

"The objects of this bill may be attained under general laws. It is, therefore, improper that special legislation should be secured to accomplish them."

The bill was not passed over the veto.

May 22. To the Assembly:

**Veto of a bill entitled "An act to authorize the trustees of the village of Saratoga Springs to remove the bodies buried in the Nelson street burying ground or cemetery."**

"Chapter four hundred and eighty-two of the Laws of eighteen hundred and seventy-five, delegates to the board of supervisors of Saratoga county power to take the action intended by the Legislature in this bill. The act is therefore unnecessary, and in violation of the present policy of the law."

The bill was not passed over the veto.

May 22. To the Assembly:

**Veto of a bill entitled "An act to amend chapter three hundred and seventy-four of the Laws of eighteen hundred and sixty-six, entitled 'An act to amend chapter three hundred and fifty-six of the Laws of eighteen hundred and thirty-seven, entitled An act for the appointment of a harbor master for the port of Albany.'"**

"The provisions of this bill would be entirely void if the act became a law. The Supreme Court of the United States, during the past winter, has decided this very point, establishing the law to be that under the Constitution of the United States no State has any right to levy any tonnage duty or tax upon vessels arriving in any of its harbors.''[u]

The bill was not passed over the veto.

May 23. To the Senate:

## PROCLAMATION CONVENING THE SENATE IN EXTRAORDINARY SESSION.

"*Whereas,* I have received from the Senate a preamble and resolution in the words and figures following, that is to say:

'STATE OF NEW YORK:

IN SENATE,
ALBANY, *May* 22, 1877.

*Whereas,* The testimony taken in the matter of the charges against De Witt C. Ellis, the Superintendent of the Banking Department, will not be printed in time for the use of the Senate during its present legislative session; and,

*Whereas,* It is deemed important that the case be considered and disposed of as soon as practicable; therefore,

*Resolved,* That his Excellency the Governor be and he is hereby requested to convene the Senate in extraordinary session immediately upon the final adjournment of the Legislature.

By order,
H. A. GLIDDEN, Clerk.'

Now, therefore, in accordance with the request of the Senate, and in pursuance of the power and authority vested in me by the Constitution,[v] I hereby respectfully require the Senate to convene in extraordinary session at the Capitol in the city of Albany, immediately after the final adjournment of the Legislature, for the purpose in said preamble and resolution mentioned, and for the transaction of such other business as I may find it necessary to bring before it.

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[u] Inmann S. S. Co. v. Tinker (1876), 94 U. S. 238.

[v] Const. 1846, art. 4, § 4.

In witness whereof, I have hereunto signed my name and affixed the privy seal of the State at the Capitol, in the city of Albany, this Wednesday, the twenty-third day of May, one thousand eight hundred and seventy-seven. [See note 18.]

By the Governor, L. ROBINSON."
D. C. Robinson, Private Secretary.

May 24. The Legislature adjourned without day.

## THIRTY-DAY BILLS.

May 25.

**Memorandum filed with Senate bill, chapter 336, making appropriations for the New Capitol, the Buffalo State Asylum for the Insane, and the Hudson River State Hospital for the Insane.**

"The reasons given for disapproving the appropriation of $1,000,000 in the supply bill, for the New Capitol, are on their face equally conclusive against the appropriation of half a million for the same purpose in this bill. It is proper, therefore, that a statement should be made of the circumstances which justify an approval of the last mentioned appropriation.

After a personal inspection of the interior of the building, I came to the conclusion that the wisest course would be to make no appropriation for the present year, and to take time to consider the matter and ascertain whether any improvement in the plans for the interior structure and use of the building could be adopted. It was with this view, and because I was unwilling that the taxes should be increased, whilst the ability to pay them was diminished, that I determined not to approve the appropriation of a million for the Capitol. But there had already been expended upon it nearly $8,000,000; the idea that this vast amount was to prove a total loss was startling, and a large majority of the Legislature were unwilling that the work should cease altogether, and were evidently determined to make an appropriation for some amount. After the supply bill had passed containing a million of dollars for the Capitol, being $200,000 more than the amount appropriated last year, I requested that the bill should be recalled, and the appropriation reduced to one-half that amount, and intimated a willingness to approve it if that was done. This fact was stated and published in the newspapers, and was well understood by members of the Legislature. The bill was not called back for amendment, and without hesitation I vetoed the appropriation. An unsuccessful attempt was made to pass it over the veto. Many members who voted against it did so with the understanding that an appropriation for half the amount would be approved. But for this fact I should disapprove any appropriation. It will be readily seen, however, that I cannot do so under present circumstances without incurring the imputation of acting in bad faith. I therefore consider myself bound in honor to approve the appropriation.

It modifies the objection to it that the whole appropriation will, as I understand, be devoted to the completion of that portion of the building intended for the Legislature, so that at the earliest practical period it may be occupied, and the question settled by actual experiment whether the building will answer any of the useful purposes for which it was intended. It is gratifying to find that even with this appropriation, the tax levy, although it contains a one-third mill tax for the Canal Debt Sinking Fund, will be over $700,000 less than it was last year."

June 23.

**Veto of Assembly bill, entitled "An act to secure better public administration of the city of New York."**

"The general reasons given for the veto of the so-called 'omnibus bill' apply with equal force to the present act. It would be a bulky addition to the existing mass of New York city statutes. It seeks to regulate many details of administration, and some of its provisions are, on their face, unobjectionable and wholesome, but the objectionable features more than counterbalance all these.

It is one of a series of bills passed by the Legislature professedly in the interest of economy and reform, but which, after their introduction into the Legislature, were so changed as to make them mere cloaks of mischievous provisions which would have led to greater evils than those which they profess to remedy. There is very little doubt but that in practice it would lead to increased rather than diminished expenditures on the part of the city.

There are, moreover, several provisions in it which are palpably unconstitutional, and others which are incongruous and subversive of all sound principles of municipal governments. It is immensely long, and would constitute a large volume by itself. The pressure of other duties prevents the specification in detail of all the objectionable features of the bill. It would simply add to the confusion now existing in the laws relating to the city, already so great that the judges of our highest court acknowledge their inability to construe them intelligently. What New York city needs, above all things at present, is to be let alone by the Legislature until that body is ready to enact a wise and complete charter, to stand as a permanent form of local government, and to be coupled with a thorough revision of existing laws.

The evils of these frequent changes in the law are greater than the suffering from any minor defects in existing laws."

June 23.

**Veto of Assembly bill, entitled "An act in relation to the government of the city of Brooklyn."**

"However wise the practice of placing departments under a single head may be regarded, it could not well be engrafted upon a system of administration enacted solely with reference to its management by commissions of greater numbers. The courts have repeatedly decided that such a transfer of powers as is made by this bill is not within the power of the Legislature. I am forced to disapprove the bill because it is unconstitutional in every line. It is a legislative appointment of one man to discharge the duties of the whole number constituting the several commissions, and there is no limitation to the term during which he shall exercise this sole power, and no provision against his holding his office forever.[w]

The effect of the bill is to legislate the presidents of the several commissions into office for life."

June 23.

**Veto of Senate bill, entitled "An act further to amend chapter 366 of the Laws of 1859, entitled 'An act to establish an insurance department.'"**

"I am unable to find sufficient merits in this bill to counterbalance the various objections to it. Its enactment is urged on the ground that otherwise examinations of life insurance companies must stop. This fear is groundless. They can go on as well as they have heretofore. If the department has exhausted its appropriation for the current year, it is barely three months until the regular appropriation becomes available, and the parties employed in the examination will at the outside, be obliged to wait only that three months for their pay, while the average delay could not exceed six weeks. The idea that this would be creating a debt against the State, contrary to the provisions of the appropriation bill of 1876, or of any other statute, is untenable. Such a construction of the act would put a stop to the administration of the government, inasmuch as almost every department exhausts its appropriation before the end of the fiscal year.

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[w] Const. 1846, art. 10, § 2.

The act was unnecessary because subsequent to its passage a deficiency appropriation of $16,000 was inserted in the supply bill, which would have been made much larger if the department had asked it.

The most serious objection to the bill, however, is that it overturns the system of account which has obtained in the State financial department from its organization. The present bill provides that the expense of examinations shall be paid directly to the superintendent by the companies examined. No entry or suggestion of the amounts, purposes or items of the expenses is to be made upon the books of the financial department of the State; and although the Comptroller is required to audit the bills, he cannot pay them, and no provision is made for preserving in his office the slightest minutes of their contents and amounts. I can see no justification for such a sweeping inroad upon the bookkeeping of the State."

June 23.

**Veto of Assembly bill, entitled "An act relative to public instruction in the city of New York."**

"There are three fatal objections to this bill. The first is, that it gives the sole power of fixing the amounts to be raised for school purposes in the city of New York to the board of education without any check upon its exercise, either by the common council, the board of estimate and apportionment, or any other elected officers of the city government. This sets up an independent power within the city government, subjecting the people of the city to taxation by two separate and distinct authorities, one of which is not elective by the people.

Another and more serious objection is, that it raises the amount allowed to be expended for each scholar from ten dollars to fourteen dollars per annum. As the pupils number over 200,000, this increases the annual expenditure of the department by the sum of $800,000. At a time when every branch of business and industry suffers from great depression, and values, prices and labor have all greatly depreciated, it is difficult to see any reason why the yearly expenses of this one department should be increased forty per cent.

Again, the bill allows the board to expend $5,000 a year for legal services. There is no propriety in such an expenditure, as the corporation counsel attends without additional compensation to all the legal business of the board that may be required."

June 23. The omnibus veto included the following bills:

An act to amend "An act to amend the charter of the city of Brooklyn, and the various amendments thereof," passed June 28, 1873, which was amended by chapter 589 of the Laws of 1874, and chapter 663 of the Laws of 1875, and to further amend the charter of the city of Brooklyn.

An Act to amend "An act entitled an act to amend the charter of the city of Brooklyn and the various amendments thereof, passed June 28, 1873, and to further amend the charter of the city of Brooklyn," as amended by an act for that purpose, passed June 1st, 1874, and as further amended by an act for that purpose, entitled "An act to amend the charter of the city of Brooklyn," being the act for that purpose, passed June 28, 1873, and the act for that purpose passed June 1st, 1874, passed June 21st, 1875.

An Act relative to public instruction in the city of New York.

An Act to provide a station-house, prison and lodging-house for the thirtieth police precinct of the city of New York.

An Act to provide for the revision of the laws relative to the administration of justice in the district courts of the city of New York.

An Act to provide for the raising of moneys to defray the expense of paving Boston avenue and Third avenue, from Westchester avenue to the northerly boundary of the Twenty-third ward in the city of New York.

An Act to establish a court in the city of New York, to be known as the "City Court of New York," and to abolish the Marine Court of said city.

An Act to provide for the construction, repair and improvement of docks, wharves, piers, slips and bulk-heads in the city of New York, and for the management and control of the same.

An Act relative to the coroners of the city and county of New York, their duties and compensation.

An Act to amend chapter 432 of the Laws of 1876, entitled "An act to provide for a further supply of pure and wholesome water for the Twenty-third and Twenty-fourth wards of the city of New York."

An Act in relation to street improvements in the Twenty-third and Twenty-fourth wards in the city of New York.

An Act in relation to the repairing of streets, south of Fourteenth street, in the city of New York.

An Act to make further provision for the payment of further expenses of the local government of the city of New York.

An Act relating to the office of the commissioner of jurors in the city of New York.

An Act to secure better administration in the local government of the city of New York.

An Act repealing certain acts and parts of acts.

An Act to amend section sixteen of title three of chapter six of part first of the Revised Statutes, entitled "Of the mode of notifying general and special elections."

An Act to prevent fraud in the manufacture and sale of commercial fertilizers.

An Act authorizing the formation of town insurance companies.

An act to authorize the building of an addition to the county jail at White Plains, in the county of Westchester, and the enlargement and improvement thereof, and to provide for the using of bonds for the purpose of paying the expense thereof.

An Act in relation to the compensation of overseer of the poor, town clerk and commissioner of highways in the town of Saugerties, Ulster county.

An Act relating to highways in the town of Eastchester, Westchester county.

An Act for the better protection of persons and property, and the more effectual prevention of crime at sea-bathing places, and upon vessels plying between such places and the cities within the State.

An Act to amend article three, title three, chapter six, part one of the Revised Statutes, in relation to inspectors of elections in cities and towns.

An Act to provide for the settlement of the floating debt of the village of Saratoga Springs.

An Act to amend chapter 497, of the Laws of 1870, entitled, "An act to establish a police force in the county of Richmond."

An Act to amend chapter 291, of the Laws of 1870, entitled, "An act for the incorporation of villages," passed April 20th, 1870, as amended by chapter 688 of the Laws of 1871.

An Act relating to the collection of taxes in the town of Plattsburgh, in the county of Clinton.

An Act to provide for the labor assessed by commissioners of highways of the towns of Camden and Annsville, Oneida county.

An Act to further amend chapter 807, entitled, "An act concerning notaries public in the counties of Kings, Queens, Richmond, Westchester and Rockland, and in the city and county of New York," and authorizing them to exercise the functions of their office therein.

An Act appropriating money to pay certificates heretofore drawn by Canal Commissioners.

An Act to amend chapter 628, of the Laws of 1874, entitled, "An act to amend an act entitled, 'An act for the incorporation of villages,'" passed April 20th, 1870.

An Act to create a board of assessors in and for the city of Utica.

An Act to amend chapter 426, of the Laws of 1847, entitled, "An act to provide for the incorporation of villages."

An Act to amend chapter 514, of the Laws of 1875, entitled, "An act to provide for the election of police justices in villages."

An Act to provide for the payment of bonds heretofore issued by the village of Middletown, in the county of Orange.

An Act to amend section 7, of chapter 5, of part 1 of title 5 of the Revised Statutes, in relation to the appointment of collectors of canal tolls.

An Act to protect salmon-trout in Lake Awasting, otherwise called Long Pond, and brook trout in the Beerkill, in the county of Ulster.

An Act supplementary to the charter of the city of Buffalo.

An Act to amend chapter 482, of the Laws of 1875, entitled, "An act to confer on boards of supervisors further powers of local legislation and administration, and to regulate the compensation of supervisors."

An Act to amend an act entitled, "An act to confer on boards of supervisors further powers of local legislation and administration, and to regulate the compensation of supervisors," passed June 5th, 1875.

An Act to authorize the town of Northfield, in the county of Richmond, to raise money to macadamize two public roads in said town, and to provide for the macadamizing thereof.

An Act to confirm the election of village trustees in certain cases, and to provide for and determine by lot their respective terms of office.

An Act to authorize the formation of a mutual insurance company in the towns of Catskill and Athens, in the county of Greene.

An Act to amend section 3, of chapter 564, of the Laws of 1875, entitled, "An act to amend chapter 172, of the Laws of 1851, entitled, 'An act for the incorporation of building, mutual, loan and accumulating fund associations.'"

An Act to amend chapter 319, of the Laws of 1848, entitled, "An act for the incorporation of benevolent, charitable, scientific and missionary societies, and to make it applicable to literary societies."

An Act to amend chapter 342, of Laws of 1850, entitled, "An act to authorize the president, directors and company of the New Baltimore and Rensselaerville turnpike road to sell and convey their present turnpike road."

An Act in relation to the manual labor school upon the Tonawanda reservation.

An Act for the relief of Abel Crook.

An Act to amend chapter 30 of the Laws of 1876, entitled, "An act to amend chapter 520, of the Laws of 1870, entitled, 'An Act to establish and maintain a police force in the city of Troy,' and to increase the powers and duties of the police commissioners of said city."

An Act to amend chapter 176, of the Laws of 1876, entitled, "An act supplementary to chapter 60, of the Laws of 1813, entitled, 'An act to provide for the incorporation of religious societies,' and the acts supplementary thereto."

An Act providing for the incorporation of the Tompkins County New York Patrons' Mutual Fire Relief Association.

An Act to amend chapter 323, of the Laws of 1853, entitled, "An act to authorize religious corporations to change their names."

An Act to amend chapter 817, of the Laws of 1866, entitled, "An act to lay out and construct a road from the river road, in township No. 14, in the town of Johnsburgh, to the Carthage road, near the head of Long lake, in the county of Hamilton."

An Act to incorporate the New York Pipe Company.

An Act to incorporate the Erie County Pipe Line Company.

An Act to incorporate the Buffalo Pipe Line Company.

An Act to legalize the State and county taxes in the city of Cohoes, Albany county, for the years 1870, 1871, 1872, 1873, 1874 and 1875, and to provide for the collection thereof, and to authorize the sale of lands in the city of Cohoes for unpaid State and county taxes.

An Act further to amend chapter 12, of the Laws of 1872, entitled, "An act prescribing the officers and employes that may be elected, appointed or employed by the Senate and Assembly, fixing the salary and compensation thereof, and regulating the proceeding of investigating committees, and providing for the payment of the expenses thereof."

An Act to confer additional powers upon the State Assessors.

An Act to authorize the board of education of the city of Brooklyn to establish a home or school of reform for truant children, and to transfer the truant home of the city of Brooklyn to the care and custody of the said board of education.

An Act to establish a high school in the city of Brooklyn.

An Act in relation to the government of the city of Brooklyn.

An Act further to amend the charter of the city of Rochester.

An Act further to amend chapter 366, of the Laws of 1859, entitled, "An act to establish an insurance department."

An Act supplemental to chapter 448, of the Laws of 1876, entitled, "An act relating to courts, officers of justice and civil proceedings."

## MUNICIPAL REFORM.

The commission on the government of cities, appointed in 1875, presented its report to the Legislature May 6, 1877. See Assembly Document No. 68 (*ante*, vol. 6, p. 951; vol. 7, p. 30). The commission proposed to work out various municipal reforms by means of a constitutional amendment, including a new article (seventeen, in eleven sections) relating to cities, and this was agreed to by the Legislature at the same session.

The amendment included a mandate to the Legislature to enact needed legislation for the purpose of carrying it into effect; and provided for the separation of city from state and national elections, requiring local elections to be held in March or April. Legislative power in a city was to be vested in a board of aldermen, chosen by the people, but this board could not exercise any power conferred by the amendment on the board of finance; the board of aldermen might, by a two-thirds vote, pass a resolution or act over the mayor's veto. The executive power of the city was to be vested in the mayor, and such other executive officers as might be prescribed by law. The mayor was to be chosen by the people, and was vested with the power of appointment of the head of the financial department and the chief law officer of the city, subject to confirmation by the Board of Finance. The mayor had the power of appointment of other officers without confirmation. He might also, with the governor's written approval, remove the head of any department, and he was vested with the veto power of any legislative act of the Board of Aldermen. The Governor might, for cause, remove a mayor and appoint a person to fill the vacancy so caused. The Legislature was required to provide for filling other vacancies in the office. Heads of departments might appoint subordinates therein. There was to be in each city, a board of finance composed of not less than six nor more than fifteen members, varying in number according to the population of the city. Voters for members of the board of finance were required to be taxpayers or lessees of real property having paid rent therefor in an amount varying according to the population of the city. The Board of Finance was required to make estimates of amounts needed for city purposes for each fiscal year, which estimates were subject to veto by the mayor, but any item might be adopted again over his veto.

No debt could be incurred in excess of an available appropriation, and no extra compensation could be granted to any officer, agent or employee of the city. The Legislature was deprived of the power to enact laws relating to the "opening, making, paving, lighting, or otherwise improving or maintaining streets, avenues, parks, or places, docks or wharves, or for any other local work or improvement in or for a city," but the city government should have exclusive authority in such cases. Nor could "the Legislature impose any charge on any city or civil division of the State containing a city, except by a vote of two-thirds of all the members elected to each house." Local improvements and assessments were regulated and loans for city purposes prohibited, except in anticipation of a tax to be levied during the current year, and except in conformity to certain prescribed regulations as to the object of the loan and the payment thereof. Legislation relating to the organization of cities, and the distribution of their powers of government was restricted except upon application and approval of prescribed city authorities or upon the concurrence of two successive legislatures.

The commission also recommended a constitutional amendment requiring the Legislature to provide for minority representation in the election of city boards. This was agreed to by the Legislature, and included in a proposed amendment to article 2, section 1, relating to the qualifications of voters.

The commission also recommended, and the Legislature agreed to a provision amending section 22, of article 3, relating to the powers of boards of supervisors, by providing that the board of finance in cities, instead of the board of aldermen, should possess all powers involving "the making of contracts, procuring supplies, or creating, auditing, or allowing county charges." The amendments were not again adopted.

For provisions relative to the government of cities see Const. 1894, art. 12.

## 1878. JANUARY 1. LEGISLATURE, ONE HUNDRED AND FIRST SESSION.

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# LUCIUS ROBINSON, Governor

## ANNUAL MESSAGE.

STATE OF NEW YORK:

Executive Chamber,
*January* 1, 1878.

To the Legislature.—The Constitution requires the Governor to " communicate by message to the Legislature at every session the condition of the State, and recommend such matters to them as he shall judge expedient." In the discharge of this duty I invite your attention in the first place to a general statement of the finances. The details from which it is made up, and the condition of all the separate funds, are fully exhibited in the Comptroller's report, to which you are respectfully referred.

| | |
|---|---|
| Aggregate balance in the treasury of the funds October 1, 1876 .................. | $8,923,053.78 |
| Aggregate receipts during the fiscal year ending September 30, 1877 ............. | 23,055,816.69 |
| | $31,978,870.47 |
| Deduct payments during the year ......... | 26,219,436.25 |
| Balance in the treasury September 30, 1877 .......................... | $5,759,434.22 |
| The amount of receipts into the treasury on account of the general fund revenues, during the year ending September 30, 1877 ............................ | $5,603,432.85 |

| | | |
|---|---|---|
| The payments, including $805,647.31, transferred to the Bounty Debt Sinking Fund. | | $5,935,808.01 |
| Deficiency of the revenue Sept. 30, 1877 | | $332,375.16 |

| | | |
|---|---|---|
| Balances due from county treasurers September 30, 1877, on account of tax of 1876 | | $855,879.81 |
| Add amount paid on account of 1877 appropriations, included in the tax levy of last year, payable into the State treasury in April and May, 1878 | | 770,598.22 |
| | | $1,626,478.03 |
| Deduct deficiency of the revenue Sept. 30, 1877, as appears in foregoing statement | $332,375.16 | |
| Also, balances of 1876 appropriations, unpaid and in force Sept. 30, 1877 | 189,637.66 | |
| | | 522,012.82 |
| Actual surplus September 30, 1877 | | $1,104,465.21 |

### DEBT.

On the 30th September, 1876, the total funded debt was $23,315,898.58, classified as follows:

| | |
|---|---|
| General Fund | $3,092,238.58 |
| Contingent | 5,000.00 |
| Canal | 10,081,660.00 |
| Bounty | 10,137,000.00 |
| | $23,315,898.58 |

On the 30th September, 1877, the total funded debt was $10,957,054.87, classified as follows:

| | |
|---|---|
| General Fund | $926,694.87 |
| Canal | 9,900,360.00 |
| Bounty | 130,000.000 |
| | $10,957,054.87 |

| | |
|---|---|
| Actual reduction of the debt during the year by cancellation | $12,358,843.71 |

| | |
|---|---|
| Aggregate amount of debt | $10,957,054.87 |
| Deduct money and securities in the sinking funds including $31,611.39 surplus in Bounty Debt Sinking Fund | 2,281,002.41 |
| Total amount of debt after applying sinking funds | $8,707,663.85 |

The balances in the sinking funds on the 30th September, 1877, including money and securities, were as follows:

| | |
|---|---|
| General Fund | $849,047.31 |
| Canal | 1,270,343.71 |
| Bounty | 161,611.39 |
| | $2,281,002.41 |

## TAXATION.

The tax levy for 1877 was at the rate of three and one-sixth mills. The Comptroller estimates that for the next fiscal year a levy of two and three-fourths mills will be sufficient. This is the lowest annual rate of the last sixteen years, and shows the rapid progress which has recently been made toward a sound and healthy condition of the State finances. It is in itself an earnest appeal to the Legislature for continued economy in public expenditures, and for great caution in making appropriations. If the local authorities will pursue a similar course, the people of the State will soon be relieved to a great extent from the burden which has so long oppressed them.

Many well-grounded complaints have been made of irregular and unreasonable assessments and unequal distribution of the taxes. The wisdom of man never has been and probably never will be able to devise a system wholly free from such defects. It is, nevertheless, the duty of the Legislature to remedy them so far as practicable; but, after all is done that can be done, the truth will remain that the only relief from heavy taxation will be found in the cutting off of all unnecessary expense. No stronger incentives to this course should be required than are now found in the depression of business and the difficulty of making payments.

In this connection I note also the great wrongs which exist in the local affairs of towns and villages. There are too many small offices in the towns, the incumbents of which can only be paid by illegal or exorbitant fees, and petty exactions. Needless criminal complaints and legal proceedings are instituted that constables, justices and jailers may receive the fees of such prosecutions. Services performed and not performed, are charged at double rates, and often several times. Faithful town auditors might cut down these bills, but often shrink from their full duty, and so by the collusion, or neglect of those who should prevent it, the people are plundered to a degree even beyond that detected in the larger cities. Town and county taxes might be much lessened if this evil could be reached, and to this end I suggest that you seek to cut off superfluous offices, reduce these extravagant fees, charge the expense of local criminal proceedings upon the county and provide for their taxation by the county judge or some other competent officer. By these or kindred measures I believe an immense aggregate saving might be effected in money as well as morals.

## PAYMENT OF THE BOUNTY DEBT.

One of the most gratifying events of the year has been the final extinguishment of the Bounty Debt, which became due on the seventh of April last. The balance of the debt remaining due on that day, after deducting the amount paid in advance and all the exchanges which had been made of securities in the sinking fund, amounted to $2,040,000, the whole of which was duly deposited in the Manhattan Bank, the place of payment designated in the bonds, and notice was published that interest upon the debt would cease from that date. Previous to the close of the fiscal year on the 30th day of September last, the whole debt, principal and interest, had been paid, with the exception of $130,000, which had not been presented. It is probable that a considerable portion of this sum may never be called for. The amount, however, remains on deposit to meet it. The debt has been a heavy burden upon the taxpayers of the State, the whole amount paid by them during the twelve years which it had to run being $43,270,337.47. Its complete and final payment is a matter for congratulation.[1]

## PAYMENT OF THE GENERAL FUND DEBT.

From the moneys and securities in the sinking fund of the General Fund debt, the sum of $2,165,543.71 has been paid, and the General Fund debt to that extent extinguished. There remains to be paid the sum of $800,000, which does not become due until the first day of July next, when it will be paid, and the General Fund debt, which has so long been in existence, will also be fully extinguished, except a small amount invested for the payment of Indian annuities.

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[1] See 1863, annual message and note 6, 1864, note 13, and 1865, annual message and note 17, for a sketch of the origin of the bounty debt, *ante*, Vol. 5, pp. 454, 571, 609.

### CANAL DEBT.

On the thirtieth of September last the canal debt, less the balances in the sinking fund, amounted to $8,630,016.29. Of this sum $880,000 became due on the first day of December last and was paid from the Canal Debt Sinking Funds, leaving the total amount of the debt, at this date, $7,750,016.29. But for the unfortunate maladministration of the canals, and the wasting of their revenues in former years, the canal debt would also have been entirely extinguished, and we should have the satisfaction of announcing that the State was entirely free from debt.

### BUSINESS AND REVENUES OF THE CANALS.

The details of the receipts and expenditures upon the canals, and the statement in regard to the canal debt and sinking fund, will be found in the report of the Auditor of the Canal Department.

In my last annual message I had occasion to refer to the heavy losses of the forwarders and boatmen on the canals, caused by the general depression of business, and the extraordinary competition of the railways, especially during the season of 1876. During that year the crops were short, the volume of business was very small, and the rates of freight insufficient to pay expenses. It is very gratifying to be able to state that, during the past season, a marked improvement has taken place. The competition of the railways has been less ruinous, the crops have been unusually abundant, the business upon the canals has increased to such an extent that all the available boats have been brought into service, and full and remunerative rates of freight have been freely paid. A season of greater prosperity for forwarders and boatmen has not been known in many years. In view of the depression and losses of 1876, and not anticipating the revival which has taken place in 1877, the tolls were reduced to an extremely low rate for the last year. Consequently the revenues have not kept pace with the increase of business. The gross amount of receipts, from all sources, was $1,053,361.01. The expenditures for superintendence, collection, and ordinary repairs, amounted to $1,050,329.68, showing an excess of receipts over expenditures, for the fiscal year, amounting to the trifling sum of $3,031.33 to be paid into the sinking fund. This leaves a large deficiency to be supplied by taxation. At least a one-fourth mill tax will be required for that purpose.

The gross tolls for the calendar year 1876 were $1,340,003.30, the gross tolls for the calendar year 1877 were $880,000, showing a falling off of $460,003.30. This shows a lower amount of receipts for tolls than has been known within the last forty-five years. As the constitution limits the amount which can be expended during this year to the gross amount received during the last year, it will be seen from the above statement that there is an absolute necessity that the expenditures should be reduced, during the present year, very largely. The only hope of accomplishing this necessary reduction is, in my judgment, immediate adoption of the change of administration provided for in the amendment of the constitution,[a] by the appointment at the earliest practicable day, of a Superintendent of Public Works, whose duty it will be to devise a new plan of administration and a thorough reorganization. By making this change, it is believed that the expenditures for the current year can surely be brought below the gross amount of revenues for the last year, and the service upon the canals improved in every respect. Most of the evils, waste and corruption which have disgraced the management of the canals in former years, arose from the systematic extravagance and fraud long prevalent upon them, and which had grown into monstrous proportions, when they were arrested by the thorough investigation and reform inaugurated in 1875. All experience has shown that the navigation of the canals is not improved, but is actually damaged by large revenues, leading to wasteful, careless and corrupt expenditures. This is illustrated by the experience of the past season. The expenditures have been much lower than for many years previous, but in no one of them have the canals been in such complete order, and so free from breaks and interruptions to navigation. And yet the administration, during 1877, has been under the old cumbersome and expensive system. It is the opinion of many well-informed men that by placing the administration under one responsible head who will adopt a new system, cutting off all abuses, the canals can be successfully managed for one-half the expense incurred during the past year. This expectation may be too sanguine and it will be imprudent to act upon it before it has been tried, but I trust it may be very nearly realized. The extraordinary and gratifying results which have been reached in the State prisons by the faithful and efficient supervision of one responsible head give reason to hope for similar results under like management of the canals. The legislation necessary to carry the amendment of the Constitution into effect was adopted by the last Legislature, but at too late a period to permit a superintendent to adopt a new plan and perfect a new organization before the opening of navigation. I trust that no unnecessary delay will now occur in carrying into effect the amendment which has become vital to the prosperity, if not to the very existence, of the canals.

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[a] Const. 1846, art. 5, § 3, am. 1876.

The improvement in canal transportation in the last season did not commence until about the first of July. From that date till the close of the season the number of boats which could be brought into use was found insufficient to meet the demands upon them. It is confidently expected that the improvement will continue throughout the whole of the coming season, and that new boats will be built sufficient to supply this deficiency. If this expectation shall be realized the canals will show that they have passed safely through the crisis of financial disaster, and that they will henceforth be able to meet the requirements of the Constitution, and at the same time secure the prosperity of those who navigate them. To say they cannot do this is a confession of weakness and decay which their friends will be unwilling to make.

### THE LATERAL CANALS.

A reference to the comparative table in the auditor's report giving the income and payments of each of the canals shows that of all the canals in the State only the Erie earned more than its expenses, and that while that yielded the small revenue of $84,840.88 over expenses, nearly all the others failed to produce a half or even a fourth of the sums expended to keep them in repair.

All the laterals south of the Erie except the Cayuga and Seneca are practically abandoned. No further expenditures should be made upon them. Those north of the Erie, required by the Constitution to be kept, give results of a very discouraging nature. The Oswego canal shows receipts of $20,473.40, expenditures of $60,994.29; the Black River receipts of $15,711; expenditures of $54,381.23; the Champlain receipts of $63,161.77, and expenditures of $214,339.81.

### STATE PRISONS.

A great improvement to be noted in the affairs of the State is that shown in the management of the State prisons. The number of convicts in the three prisons on the 30th of September, 1877, was as follows:

| | |
|---|---|
| Auburn | 1,388 |
| Clinton | 566 |
| Sing Sing | 1,641 |
| Total | 3,595 |

The total number on September 30, 1876, was 3,509, showing an increase for the present year of eighty-six. The advances from the treasury exceeded the receipts from the prison earnings for the fiscal year ending September thirtieth last by the sum of $369,688.08. This deficit, as given in my last annual message, was $704,379.85, showing a decrease of the annual draft upon the State treasury of $334,691.77. As the present Superintendent did not enter upon his official duties until the 17th day of February, 1877, and had, therefore, been in control little more than seven months at the close of the fiscal year, this result is the more creditable. Of the actual deficit the first five months, during which the prisons were managed under the old system, developed by far the greater part. It is but fair to add that the returns of Sing Sing, formerly the most costly of all our prisons, for the last three months of the calendar year show an actual revenue to the State treasury over all expenditures. These figures furnish strong proof of the wisdom of the new system of managing our public institutions through a single responsible head, and inspire the hope that in a short time the prisons of the State, so long a costly burden to the taxpayers, will become self-sustaining. An equal advantage to the present system already attained is found in the better discipline and greater industry maintained at the several prisons; morally, far more beneficial to their inmates than the license and irregularities of former times.

In connection with the penal system of the State, I ask that you consider the overcrowded condition of our State prisons, largely the result of excessive sentences. Some years since an act was passed, allowing very considerable deductions from the terms of convicts whose behavior should be satisfactory during their confinement. This law has much improved the discipline in our prisons, and has worked well in all respects. A study of the commitments since its passage, however, leads to the conclusion that our criminal courts, especially in the city of New York, take account of these deductions in passing sentences, and by imposing longer terms really defeat the object of the commutation act. The extreme penalties of the law are often inflicted for first offences of every grade. It is not at all uncommon to find in the State prisons lads of sixteen or eighteen who, for a really trivial fault, upon their plea of guilty to an indictment of some grave crime, have been sent to prison for twenty years. Such boys are too often, although innocent, led to plead guilty to crimes they never committed, by the persuasions of indolent or unprincipled lawyers, who having robbed them of their money seek thus to avoid the trouble of trials. Some such convicts are able to bring their cases to the notice of the Executive, with proofs which justify the exercise of clemency, but the great majority drag out wretched lives in prison, emerging at last useless to themselves and the community. It seems that some steps should be taken to prevent this injustice, and I ask that you consider the matter in connection with the subject of penalties.

## STATE REFORMATORY AT ELMIRA.

The State Reformatory at Elmira approaches completion, and now contains about 140 convicts. The Legislature, at its last session, passed an act giving the board of managers wide discretion in the detention, release and supervision of the criminals committed to their charge. Under this act, it was hoped by those who had given much attention to the subject, the maximum of moral improvement in youthful convicts might be attained. The system is, of course, an experiment. It has been often advocated, but never before so thoroughly tried in this State. The Reformatory is believed to be at present so administered as to insure the success of the experiment, if success is possible. There have been expended upon the buildings and grounds, fittings and furniture of the Reformatory during the past year, $80,000, leaving an unexpended balance of the appropriation made last winter of $105,000, which the managers estimate will be sufficient to complete the building. It will then accommodate 500 convicts, and may furnish needed relief to our crowded State prisons.

## UNEMPLOYED LABOR.

The depression in all branches of trade, business and manufacture, and the wreck of our too numerous railroad, mining, iron and milling ventures, have thrown out of employ a vast number of laboring men, who, without fault of their own, are now suffering extreme want. While it is true that legislation can do little for their relief, it is well to understand clearly the causes which have led to their distress. In 1860 there was no complaint of lack of employment or scant wages. The money of the country was specie or paper convertible into it at will. The currency was substantially steady and uniform, as was the condition of all branches of trade and industry, and the prices of labor, and of the necessaries of life. The laws of trade regulated and controlled the entire energy of our community.

Immediately after the commencement of the civil war in 1861, the general government began an inflation of the currency by the issue of paper money. This soon led to the suspension of specie payments, and, consequently, the volume of the currency demanded by trade had no regulator. Within three or four years the volume of our currency was swollen to more than double the amount in use in 1860 and 1861. The inevitable result followed; a rapid increase of the price of all commodities, an unnatural stimulation of trade and manufactures, and a necessary increase in the wages of mechanics, artisans and laborers. At the same time another great evil was strongly developed. Individuals and corporations engaged in the various branches of manufacture taking advantage of the necessities of the government rushed to Congress and, by every means in their power, procured each for its own benefit the levy of what were called protective duties, under the false pretence of raising revenue for the government, but really to compel consumers to pay exorbitant prices for the favored articles thus protected. Under the wing and stimulus of this so-called protection new enterprises were undertaken; new and extensive factories built; new and needless railways projected and undertaken; new mines and foundries opened, and armies of laborers allured by high wages to these enterprises from fields of agriculture and other sober and rational employments of life.

The few notes of warning raised against the certain consequences of this wild overaction were unheeded. Extravagance of expenditure, the absence of everything like frugality and economy obtained in all directions. The empty and delusive bubble thus raised could not endure, and although kept afloat by the whole power of the government so long as it was possible, it met at last the inevitable day of doom. Imaginary fortunes vanished in a moment, ill-advised railway schemes, mines, mills and factories, were suspended, and tens of thousands of innocent and unfortunate laborers were left without employment or the means of subsistence. Instead of the high wages by which they had been enticed from other occupations to these enterprises, they received no wages at all. It is easier to discover the cause of this distress than to point out the manner of its relief. There can be but one permanent and effectual remedy. That is to return as speedily as possible to the condition of things that existed before the road to ruin was entered upon; by means of a return to specie payments, a sound and stable currency and the reduction of the tariff to a strictly revenue standard.[2]

Under the influence of these measures all branches of industry will resume their old and accustomed regularity and success. All departments of labor will call for employes, to whom such wages will be paid as the business will warrant and the parties can agree upon. If a surplus of unemployed laborers still remains there are open to all in this great country countless millions of fertile acres of land upon which every industrious man can be sure of securing for himself and family at least a comfortable subsistence. One of the greatest evils resulting to the laboring men, from the false and delusive appearances which have been displayed before them, is that they have been induced to leave the safe, peaceful and independent walks of agriculture, to congregate in the large cities, and there to watch and wait for something that they fancy might yield them larger returns than they could hope for from the cultivation of the soil. But, by following faithfully and earnestly the road here indicated, it will not be very long before business and trade will be restored to their natural channels and laborers receive full employment with fair wages. All efforts to delay this result will do no good but infinite harm. The worst thing that could possibly happen to business and to labor, would be anything approaching a return to the unsound and vicious condition of things which has so long prevailed, and from which we are now slowly emerging. It can have no possible result but another downfall and a more wide-spread ruin. If, in the meantime, any legislation is found necessary and practicable for the protection of the laboring classes against frauds and wrongs on the part of the individuals or corporations by whom they are employed, it should be promptly undertaken with a proper sense of the importance of the great interests involved.

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[2] On the 10th of January, 1878, the Assembly adopted the following concurrent resolution relative to the currency, which was concurred in by the Senate on the 29th:

"*Resolved*, That it is the sense of the Legislature of the State of New York, that the good faith of the Nation is pledged to the redemption of the coin obligations of the government in gold or its full equivalent; that any violation of the public faith would be injurious to the public credit, and hurtful to the good name of our country; that a new debasement of the currency would unsettle business, disorganize industry, injure labor, indefinitely postpone the resumption of specie payment, and thus defeat the early restoration of general prosperity; and that, therefore, The enactment of what is known as the Bland silver bill by the Congress of the United States, or of any measure calculated to embarrass or prevent resumption within the time fixed by law, would be a grave public calamity."

## RIOTS OF JULY.

Times of distress like those above referred to, never failed to open a wide field to a class of agitators and demagogues, who, whilst declining to work themselves, make it their business to go amongst honest men who would labor if they could find work, and endeavor to stir up strife and discord. During the last summer these agitators, reinforced from every large city in Europe, were unusually active and malignant. Spreading themselves all over the country, they endeavored to create discontent among all those who had employment and to stir up the evil passions of those who had not. Combinations were formed for strikes on all the principal railway lines and in all the large mining and manufacturing establishments. These efforts culminated in wild scenes of riot and bloodshed in several States. Like scenes were threatened in this State on the first of July and broke out in acts of open violence on the 21st of that month. The trains upon the Erie and New York Central railways were forcibly stopped, the depots, freight houses and rolling stock taken possession of by violence and threatened with destruction by fire; honest and innocent laborers and employes who refused to abandon their work and their places were forced from the trains or driven from the shops. Excited crowds of men were collected at Albany, at Syracuse, at Buffalo, at Hornellsville, at Corning, at Elmira, and the peace of the city of New York was seriously threatened. In this condition of things it was impossible to hesitate as to the course to be pursued by the Chief Magistrate of the State. Much as all men are dependent upon the laws for protection there is no one class more constantly in need of it or over whom its protecting power should be more constantly exercised than the poor and laboring. And, greatly as our sympathies might be exercised in their behalf, when wicked and evil disposed men undertook even in their name to set the government at defiance and to overturn the laws made for their protection, it was incumbent upon the authorities at once to vindicate the majesty of the law and make its power felt. Seeing the magnitude of the disturbance and the danger of its spreading over the whole State, the entire force of the National Guard was ordered under arms to hold itself ready to move at a moment's notice. The manner in which the military forces of the State responded to this order was worthy of all praise. The Fifty-fourth regiment of Rochester, the Seventy-fourth of Buffalo, the One Hundred and Tenth battalion and battery of Elmira, and the Twenty-third regiment of Brooklyn were first ordered to Hornellsville, where the disturbance commenced. The Ninth regiment of New York, the Tenth and Twenty-fifth of Albany, the Troy Citizens' corps and the Tibbits corps of Troy, with some separate companies, were ordered to Albany. The Albany Burgesses corps and the Jackson corps volunteered their services and were accepted. The Forty-ninth regiment of Auburn, the Sixty-fifth of Buffalo, and several separate companies were ordered to Buffalo, the Fiftieth battalion of Ithaca was ordered to Elmira, and the Eighth regiment of New York to Syracuse. The several regiments, battalions and companies above mentioned, moved to the respective points designated, with extraordinary rapidity and good order. Their behavior throughout was highly creditable to their discipline and training as citizen soldiers.

One of the most dangerous modes of interfering with the operating of the railways was the tearing up of the tracks and the placing of obstructions upon them for the purpose of wrecking trains, thereby imperiling the lives of passengers and destroying the property in process of transportation. Fortunately, the Legislature, at its last session, passed an act inflicting severe penalties upon parties guilty of this monstrous crime. Along with the movements of the troops above mentioned, I issued a proclamation reciting the provisions of the said act, and offering a reward of $500 for the arrest and conviction of any person guilty of its violation, and calling upon all magistrates, sheriffs, and district attorneys to be vigilant in the prosecution of offenders. The measures thus taken proved entirely effectual. Within one week from the outbreak of the disturbances they were entirely suppressed, peace and good order restored, and the military forces dismissed and returned to their homes, without bloodshed or serious destruction of property. The accounts for the services, transportation and subsistence of the troops have been carefully examined and audited by the Adjutant General, and with a few trifling exceptions, paid. The aggregate amount, it is believed, will not exceed $230,000.

Only a few applications have been made for the reward offered in the proclamation above referred to. The offer of the reward having fully accomplished its immediate object, I have, in view of the convening of the Legislature, withdrawn it. I recommend, however, some increase of the usual appropriation from which rewards for the apprehension of criminals are paid.[3]

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[3] The supply bill, chapter 252, made an appropriation of $1,000 for expenses connected with the apprehension of criminals, in addition to the regular item of $1,000 for the executive department in the general appropriation act, chapter 29.

## THE NATIONAL GUARD.

At the present time the National Guard consists of eight divisions, fourteen brigades, one regiment and eleven separate troops of Cavalry, one battalion and eleven separate batteries of Artillery, and twenty-four regiments, seven battalions and twenty-one separate companies of Infantry; in all comprising 1,152 commissioned officers, and 18,883 non-commissioned officers, musicians and privates, making an aggregate force of 20,035.

The report of the Adjutant General, to which I invite your careful attention, shows in detail the number and organization of the military forces of the State. It also gives the details in full of their operations during the exciting riots in July last. The discipline and efficiency of the forces were illustrated in a most gratifying manner during the severe trials through which they were called to pass. Ordered suddenly to duty, without time for suitable preparations for a campaign, they moved without a murmur, and with extraordinary rapidity to their assigned positions, and their behavior throughout was in the highest degree creditable to them. The events and the results show the necessity of an efficient and well-organized military force of its own, in every State that would maintain its independence and the supremacy of its laws, without calling upon the federal government. Whilst the services to which I have referred prove the general excellence of our organization in this State, they also disclose certain points in regard to which improvements are possible and important. Several regiments and brigades were found to contain very few men but a full number of officers. These have been undergoing disbandment to a large extent, by which efficiency will be gained and expense saved. The Adjutant General urges in his report, the importance of organizing a separate company in each county where there is no regiment or battalion. Such companies, with full numbers and good officers, would be at all times available at the call of the sheriffs of the several counties in case of local disturbances, and it was found by experience during the last summer, that companies of this class performed excellent service and were easily formed into battalions or attached to other organizations. I cordially approve the recommendation of the Adjutant General in this respect, and also such increased appropriations as will enable every enlisted man in the force to be fully equipped without personal expense to himself.[4]

## COMMON SCHOOLS.

The Superintendent of Public Instruction has given to me the following statistics:

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|---|---|
| Total receipts, including balance on hand Sept. 30, 1876 | $12,110,903.63 |
| Total expenditures | 10,976,234.45 |
| Amount paid for teachers' wages | 7,915,633.51 |
| Amount paid for school houses, repairs, furniture, etc. | 1,358,404.35 |
| Estimated value of school houses and sites | 30,386,248.00 |

| | |
|---|---|
| Number of school houses | 11,833 |
| Number of school districts, exclusive of cities | 11,287 |
| Number of teachers employed for the legal term of school | 19,737 |
| Number of teachers employed during any portion of the year | 30,161 |
| Number of children attending public schools | 1,023,715 |

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[4] Chapter 275, approved May 18, authorized the formation of separate companies of infantry in cities or villages where there were no existing organizations in that branch of the service. The same act, section 44, amending the military code of 1870, chapter 80, increased from $5 to $8 the sum allowed non-commissioned officers, musicians and privates to aid them in procuring uniforms and equipments.

| | |
|---|---|
| Number of persons attending normal schools | 6,045 |
| Number of children of school age in private schools | 117,154 |
| Number of volumes in the school district libraries | 765,546 |
| Number of persons in the State between the ages of five and twenty-one years | 1,586,234 |

It will be seen from the foregoing statement that the money raised by taxation for the schools of the State, amounts to much more than double the sum required to pay the entire expenses of the State government, executive, legislative, judicial, civil and military. The expenditure of so large an amount of public money for any purpose, is liable to lead to great abuses, as has been shown in all our past experience. In my judgment, a very great wrong has already grown up in connection with our otherwise excellent system. It lies in the principle of applying large amounts of the moneys raised by taxation, to the support of high schools, and instruction in all the sciences and higher branches of study required in the learned professions. I can find no excuse for raising money by general taxation for such purposes. The only good reason which can be urged for taxing one class of citizens for the education of the children of another class, is the necessity of giving to the children of all classes a sufficient common school education to enable them to understand their duties, and exercise their rights as citizens of a free country governed by the popular voice. When we go beyond this and take from one man the money necessary to educate the children of another man in the arts and sciences, we perpetrate an act of injustice under the forms of law. What is worse than this, instead of educating the masses of children so as to prepare them for the pursuits and industries upon which they must depend for a living we educate them in such a way as to make them discontented with their condition, unfit to discharge its duties in a manner most beneficial to their own interests, and take away the strong incentives which impel those who are really able and worthy to win for themselves high positions in learning and usefulness. When the State has given to all the children a good common school education, it should there leave them to their own resources, and to follow such callings in life as their capacities fit them for. To go beyond this, is to injure rather than benefit them. These and several other suggestions upon this subject were referred to in my last annual message, with a caution to avoid any abuses of our school system which would bring it into disrepute, and loosen the hold which it now has upon the favor of the community. I commend these suggestions to your consideration.

## COLLEGES AND ACADEMIES.

The system of higher education in the colleges, academies and high schools continues in successful operation. The details of the condition and working of these institutions, for the last year, will be fully exhibited in the annual report of the Regents of the University, to be transmitted to the Legislature early in the session.

## CONSTITUTIONAL AMENDMENTS.

Among the changes made in our Constitution, in 1874, were many restricting the powers of the Legislature in certain cases. These limitations are so constantly liable to infringement, in the hurry of legislative business, that I deem it proper to call special attention to the amendments themselves.

Section 18 of article 3 provides that " The Legislature shall not pass a private or local bill in any of the following cases:

" Changing the names of persons.

"Laying out, opening, altering, working or discontinuing roads, highways or alleys, or for draining swamps or other low lands.

"Locating or changing county seats.

"Providing for changes of venue in civil or criminal cases.

"Incorporating villages.

"Providing for election of members of boards of supervisors.

"Selecting, drawing, summoning or impaneling grand or petit jurors.

"Regulating the rate of interest on money.

"The opening and conducting of elections, or designating places of voting.

"Creating, increasing or decreasing fees, percentage or allowances of public officers, during the term for which said officers are elected or appointed.

"Granting to any corporation, association or individual the right to lay down railroad tracks.

"Granting to any private corporation, association or individual any exclusive privilege, immunity or franchise whatever.

"Providing for building bridges and chartering companies for such purposes, except on the Hudson river below Waterford, and on the East river, or over the waters forming a part of the boundaries of the State."

Section 19 of article 3 is as follows: "The Legislature shall neither audit nor allow any private claim or account against the State, but may appropriate money to pay such claims as shall have been audited and allowed according to law."

Section 24 of article 3 provides that "The Legislature shall not, nor shall the common council of any city, nor any board of supervisors grant any extra compensation to any public officer, servant, agent or contractor."

The aim of these changes was to limit legislative action in matters of which it is impossible that the Legislature should have accurate knowledge. Of the great number of bills which I was unable to approve at the last session, a majority infringed some of these restrictive provisions, and as this doubtless arose from oversight, I have thought proper to insert them here.

## GENERAL LEGISLATION IN APPROPRIATION BILLS.

I refer again to the very objectionable practice which has prevailed of enacting general legislation in appropriation bills. It places legislative provisions where no one ever expects to find them, and puts them beyond the reach of disapproval by the Governor, unless he vetoes the whole bill in which they are contained. There was less of this mischief in the appropriation bills of last year than had become usual, but there was too much of it. It should be discontinued altogether.[5]

## VILLAGE CHARTER AMENDMENTS.

For some years past it has been the policy of the Constitution to lessen local and special legislation. I need not dwell on the great extent to which this class of statutes had swelled at the time the people, by amending the Constitution, sought to diminish it.[b] The settled purpose of the people is to commit this entire subject to general laws. Yet localities still attempt to defeat this aim and to return to the old and evil path of special charters and special provisions. Although villages cannot now be so chartered, and the general act provides that those organized before the Constitution was amended may take the benefit of the new system, efforts are often made to amend the old charters by special acts and thereby secure a new special charter under the guise of an amendment. In nearly every case such amendments are directly in conflict with the policy and provisions of the general statutes, and seek by means more or less unworthy to gain local advantage at the expense of general policy. Careful reflection on this subject has convinced me that far less evils will result from a refusal to enact or approve the mass of amendments proposed to these special village charters, and the reference of the whole subject of village grievances to the general laws provided for their regulation. This course I earnestly urge you to take, believing that the great relief it will give to the overburdened files of the Legislature and executive, will more than compensate for any occasional friction in the adjustment of local affairs.

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[5] See 1877, note 12, for a reference to the provision in the Constitution of 1894, art. 3, § 22, prohibiting "riders" on appropriation bills, *ante*, p. 26.

[b] Const. 1846, art. 3, § 18, added 1874, see am. 1901.

## THE CITY OF NEW YORK.

The vast and increasing population and business of the city of New York, its position as the commercial metropolis of the western world, the rapid extension of its limits, its large corporations and institutions of various kinds, its political power, its immense trade and its financial and commercial interests, render its proper, economical and efficient government a problem of the highest importance, and of very serious difficulty. About twenty years ago, the embarrassments which had arisen in the local government led first to the establishment of legislative commissions to control various departments, and finally transferred to the State capitol nearly all the appropriate powers of the common council. Since then at every session of the Legislature the Senate and Assembly have, to a large extent, presented the appearance of a board of aldermen and assistant aldermen for the city of New York. The result has been disastrous in the extreme. Within that time upwards of twenty-four hundred laws have been passed relating to the city. These have been, upon some subjects, so confused and conflicting, that the court of last resort has pronounced it impossible to ascertain and declare their true meaning. The enormous extent of corruption and plunder perpetrated under these laws is too well known to require repetition. It stands out as the darkest blot upon the records of the city and the State. Of the oppressive debt which hangs over the city, the amount of eighty-five millions of dollars was put upon it by legislative acts, for which the city itself never applied. Of the 2,400 acts above referred to, the majority of them will be found to be, or to cover mere schemes for plunder, or to change official power from one class of men to another. At the last session of the Legislature over 150 bills relating to the city were introduced into the two houses, and a majority of them were passed. Some of them originally contained very good provisions for remedying evils which had become intolerable, but in their passage through the Legislature there had been attached to all such provisions amendments which were intended to keep up the old and corrupt system, and which could not fail of producing more injury than benefit. Many of them were also in flagrant violation of the Constitution. For these reasons, and in the full conviction that it was worse than useless to pile upon the city of New York any more laws of the description of those which had been passed during the last twenty years, I returned all bills of this character without my approval. The question, "what now is to be done?" remains an open and important one. The whole subject of municipal reform was under discussion for many months by a commission composed of very able and learned men appointed by my predecessor, and their report was made to the Legislature at its last session. The plan of government proposed by the commission involved, however, certain extensive amendments to the Constitution. These amendments were approved by the last Legislature. Under the Constitution,[c] they must be approved by you also before they can be submitted to the people. If you see fit to do so, they will be referred to the people for action at the next general election. In the event that you withhold such approval, it will remain a grave question for the Legislature to determine what should be done.

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[c] Const. 1846, art. 13, § 1. For previous action see 1877, note 13, *ante*, p. 30.

In my message returning to the Assembly the bill entitled "An act to secure better local government for the city of New York," I stated that in my opinion the great want of the city was a charter.

I am still of the opinion that the only effectual remedy for the evils under which the city suffers, will be a careful and well considered charter in the nature of a constitution, organizing a local government with a strong and responsible executive head, with a city legislature composed of two houses, and clothed with all the powers of local legislation, subject to veto by the mayor. I believe that such a charter may be easily framed, although it would be out of place to attempt to set forth the details of it in this message. When once fully and fairly considered and adopted, it is believed that the advantages of it would be so apparent as to induce steady adherence to it, and to the local government established under it rather than to return to the dangerous experiment of passing local laws for the city of New York by members of the Legislature, three-fourths of whom know little of the wants of the city. In the meantime, if the Legislature shall adopt any measures relating to the city which promise real and substantial relief from its extravagant expenses and oppressive taxation, and free from the evils which have marred so many previous acts, they will meet my cordial approval.[6]

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[6] In 1882, chapter 410, New York received a new charter which was known as the Consolidation act. This continued in force, with various amendments, until the greater New York charter of 1897, chapter 378, which was followed by the amended charter of 1901, chapter 466. See 1872, note 13, for cases involving the interpretation of New York charters, *ante,* Vol. 6, pp. 387, 519.

## HARBORMASTERS AND PORT WARDENS.

The large amount annually paid to harbormasters and port wardens in New York, is a direct tax upon the commerce of that port. It has been suggested to me by many persons engaged in the shipping trade, that all the services required by those officers might easily be performed by the police of the city or through the dock department, without any material increase of expense to the city, and thus exempt commerce from the heavy tax now imposed upon it. I am informed that New York is the only port where such charges are made, that nothing of the kind is known in any of the cities which assume to be her commercial rivals. It is, moreover, quite doubtful whether the legality of the charges made can be maintained under the recent decisions of the Supreme Court of the United States.[d]

I submit the matter to your consideration.

## EXCISE LAWS.

The state of our excise laws seems to demand attention. Recently our highest court was called upon, in a case brought before it, to declare what the conditions are under which licenses to sell spirits in small quantities may be granted. Its conclusion was contrary to the construction under which the officials administering the law had acted. generally by legal advice, for some years past. It may be said the provisions now in force were found not to be such as the public generally had supposed them to be. The pains taken by the court in discussing the question proves that it was one of some intricacy. The doubt was due to there being too many laws on the subject in force at the same time; and the consequent necessity of resorting to older statutes in order to find the meaning of more recent enactments and of deciding where the old and the new law conflicted, and to what extent repealing clauses operated.

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[d] See Henderson v. Wickham, 92 U. S. 259.

If, under such circumstances, dealers erred in construing their privileges, it would not be just to hold them to penalties as for a willful violation of law. The Legislature is bound to make its enactments explicit and easy to be understood. The decision of the court, although undoubtedly correct, was a surprise, and caused much excitement among all interested. Its enforcement, no doubt, was accompanied by hardships. What is needed is to substitute for all existing laws on the subject a carefully prepared statute, reasonable in its limitations and restraints, clear and explicit in all its provisions, and, above all, complete in itself; to be uniformly, steadily and constantly enforced.[7]

## REAPPORTIONMENT.

Among the duties devolved upon the Legislature by the Constitution, will be the rearrangement of the Senate and Assembly districts. Sections 4 and 5 of Article 3 of the Constitution expressly charge the Legislature, after each census, to so adjust these districts, that they shall contain, as near as may be, an equal number of inhabitants. From the beginning to the end of the Constitution, there is no stronger obligation placed upon the Legislature than this. It involves the most important right of the people, under our form of government; their voice in the legislative halls. By the terms of the Constitution, this duty should have been discharged in 1876, but it was not performed in that or the succeeding year. I do not desire to characterize this past disregard of the command of our highest law. I assume that the present Legislature will observe its oath to support the Constitution. To adjust these districts according to the return of the census, is a matter of mere mathematical calculation. It is easy of accomplishment, if approached, as I presume it will be, in a fair and impartial spirit. Certainly we cannot expect that the people will long continue to observe the ordinary restrictions and requirements of statute law, if their representatives who make that law utterly disregard and defy the especial mandates of the Constitution they have solemnly sworn to support.[8]

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[7] See People v. Smith (1877), 69 N. Y. 175, in which the court say that the provisions of the excise act of 1870, chapter 175, relating to the granting of licenses, must be construed in connection with the provisions of the excise act of 1857, chapter 628.

### LIFE INSURANCE COMPANIES AND SAVINGS BANKS.

Life insurance is comparatively new to this country, having been little known until within the last thirty years. The companies first organized to transact it, had to follow an untrodden path, and to correct errors as they gained experience. Thus feeling their way along, as their methods improved their business and usefulness increased. They now distribute many millions annually among widows and orphans, a majority of whom would otherwise be left destitute. Such organizations, if well managed, are of inestimable benefit to the community, and deserve all needful legislative support and protection. From time to time laws have been passed for the mutual protection of insurer and insured. Some of them have been extensively followed in other States. It cannot be claimed that their operation has been eminently successful. In some respects they have worked positive harm. Although a detailed review of the subject is far without the scope of this message, it is proper to instance the section of our statute requiring the deposit by every insurance company chartered in our State, and of others not making a similar deposit in their own States, of $100,000 in securities as a condition precedent to the transaction of business. Several other States have added to their laws a requirement that companies chartered in this State should also deposit a specified amount of securities with their departments before doing business in those States. This has already resulted in hardship. The moneys so deposited in other States are completely beyond the control of the company which owns them, our department which supervises it, and the jurisdiction of our State courts. A perfectly solvent company may find itself embarrassed by the increasing calls upon it for heavy deposits of securities in other States. It would seem that funds thus beyond the jurisdiction of our State, ought not to be accredited and certified by our department. Again, great injustice often attends the winding up of insolvent companies, and much of it is due to the theory of the law applicable to that subject. As would be properly prescribed for a commercial bankrupt, if the reserve of an insurance company becomes impaired, the law directs the Superintendent of the Insurance Department, the Attorney General and the courts, to wind it up and distribute its assets. This rule is unjust to those policy holders whose health has failed and who are, therefore, unable to procure insurance elsewhere, and also to those who, by reason of advanced age, can only secure insurance at increased cost. I think some more equitable plan of dissolution might be devised for such cases. It is now the practice, upon the application of the Attorney General when called upon by the Superintendent to place the affairs of insolvent companies in the hands of a receiver, who, at great expense of time and money, and with invariable loss to those interested, winds up its affairs. It may well be asked if this work would not be better and more cheaply done by placing the affairs of such companies in the hands of other life insurance or trust companies of high character and of known and approved responsibility, rather than in the hands of receivers, who are strangers to the practical methods of managing this class of business.

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[8] The Legislative apportionment act was passed in 1879, chapter 208.

Akin to the business of life insurance, in many respects, is that of savings banks. These institutions hold in trust the little treasures of the poor. Upon their soundness and honest management depends much of that public confidence essential to the business of the country. Numerous failures among these banks have brought heavy losses upon those ill able to bear it, and stripped many of their entire savings. All that I have said of the insolvency of life insurance companies, is as well applicable to the closing of savings banks.

I urge the Legislature to take strict account of these two classes of fiduciary corporations. Their organization, methods and needs are so nearly alike, that they may be treated together. The State which chartered them has a right to say they shall be faithful to those who trust them. To that end it should hold them to strict accountability. It is a lamentable fact, that many organizations in both these great lines of business, have been found utterly unworthy of trust during the past few years. Life insurance companies have engaged in reckless competition, paying exorbitant commissions and investing in costly buildings and equipments. Savings banks, not content with filling their proper sphere as custodians of small savings, have sought to extend their business by obtaining deposits of large amount, a course which I deprecated in my last message. They, too, have been guilty of improper extravagance of management. It is equally true that the departments created for the especial supervision of these institutions have failed to protect the public from loss by such shortcomings. Whence this failure has come is matter for your grave consideration. It is doubtless true that the laws which govern both the departments and the companies might be wisely amended, but the subject is a most important one. It must certainly be admitted that the departmental examinations have so far failed to give to the public any safeguard at all commensurate with their enormous cost to the institutions examined.[9]

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[9] Chapter 347, approved May 23, 1878, restricted the financial transactions of savings banks, and limited the classes of property in which investments might be made. The same act reduced the amount of an individual deposit in a savings bank, from $5,000 to $3,000. Chapter 372, approved May 28, amended existing statutory provisions as to receiverships of savings banks.

## THE CODE.

In 1848, the old system of practice at law and in equity was abrogated, and in its stead was enacted the Code of Civil Procedure. Contemplating at this distance of time the results of the change, it may well be doubted whether it conferred any substantial benefit upon the people at all equivalent to the evils of which it was the cause. For twenty-five years the practice of law was unsettled. Private rights were imperiled by differing constructions of remedial provisions, and thousands of practice questions burdened our courts and crowded our law reports. At last, however, at the end of a quarter of a century, the construction of the Code had been substantially fixed by the courts. It was no longer common to see a citizen deprived of substantial rights in our tribunals through mistaken views of practice. The Legislature passed an act March 2, 1870, authorizing certain commissioners to "revise, simplify, arrange, and consolidate all statutes of the State of New York, general and permanent in their nature," and in performing this duty, to bring "together all statutes and parts of statutes which, from similarity of subject, ought to be brought together, omitting redundant or obsolete enactments, and making such alterations as may be necessary to reconcile the contradictions, supply the omissions and amend the imperfections of the original text." It is not necessary here to discuss the seriously debated objection, that this authority was not meant to extend to a revision of our system of practice. The commissioners did submit a new and voluminous act, entitled "The Code of Remedial Justice." Part of it, including 1,496 sections, was enacted by the Legislature of 1876, with a provision that it should not take effect until May 1, 1877. This date the Legislature, at its last session, changed to September 1, 1877, since which date that part of the revised system has been in operation under the restored name of "The Code of Civil Procedure." The remainder of the proposed

Code, containing 1,800 sections, was passed by the last Legislature and sent to the Executive Chamber, with more than 250 other bills, to be acted upon during the thirty days following the adjournment. It was a physical impossibility to read the act, which covered nearly 700 closely printed pages. The Constitution forbade its enactment after the adjournment without the written approval of the Governor.[e] I did not feel authorized to approve an act which I could not read, and the bill, therefore, failed to become a law. The matter will, undoubtedly, be brought to your attention. It seems only proper to remind you that this new system can only be continued at the expense of another long period of doubt and litigation over its proper construction, which will cost the people of the State many millions of dollars. Already, serious questions of this sort have been brought before the courts. The great question will be presented to you whether the new system can be so far superior to the old as to justify you in committing the whole administration of civil justice to the confusion of construction from which it has just emerged. The courts under the old system, which they understand, are already burdened with labors almost beyond endurance, and it seems unwise to precipitate upon them a mass of practice litigation which must necessarily retard still more their accumulated load of business. I submit to your careful reflection the proposition that this grave subject would be best disposed of by the repeal of the partial code which went into effect on the first of September, and the re-enactment of the Code which was in force up to that date, to be amended, from time to time, as experience may suggest.[10]

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[e] Const. 1846, art. 4, § 9, am. 1874.

[10] See special message of March 14, vetoing a bill containing the remainder of the Code of Civil Procedure. This part of the Code was passed in 1880, and became chapter 178.

## SPECIE PAYMENTS.

In view of the discussions going on in the Congress of the United States, it seems proper for me to remind you and our people that, whatever may happen elsewhere, specie payments are, under existing laws, to be resumed in this State from and after the first day of January next. Chapter 73, of the Laws of 1875, provides, first, that after the first day of January, 1879, all taxes levied in this State shall be paid in gold or in coin certificates or bank notes redeemable in gold; and, secondly, that in all contracts made in this State after that date, the word dollars shall be construed to mean coin. All our taxes, general and local, including canal tolls, will, next year, have to be paid in gold or its equivalent, and the courts will be obliged to enforce private contracts in coin.

It will be seen that the day fixed in this law of our State is the same which is appointed by existing statutes of the United States for the resumption of specie payments by the treasury. The low premium on gold, which has for a long period prevailed, indicates a condition of things favorable to specie payments being generally re-established at an early day. It seems to me manifest now that if the credit of the federal government can be maintained at the point at which it stood a month or two ago, so that its bonds bearing low interest are freely sold, the treasury will be able to resume payment on or before the day designated, without distress to the community. We have, in fact, passed through all the suffering involved in the reduction of prices which inevitably followed the false values of a period of great inflation. Prices both of wages and property are, with few exceptions, lower to-day than they would have been if we had never departed from the coin standard; and I do not doubt that the resumption of specie payments will, at once, increase the exchangeable value of property and the market price of labor. They are in error who suppose that a prolongation of the present uncertain condition of things will bring relief to those who, owing money, hope to realize more for their property, or to that large class of men which is looking for better rates of wages. With the present want of confidence, property does not readily find purchasers at any price; capital is timid in investing; enterprise is checked. Until confidence is restored, our wonted activity in the exchanging of property will not return, and until the present tendency to inactivity and almost morbid caution ceases, we will look in vain for a higher rate of wages. No financial device, by way of renewed inflation or debasement of our money, will compensate for the disastrous effects of the additional loss of confidence, which any such device will bring about. Relief is near at hand if we will seek it by the straight road; and it would be great weakness now, when we have paid the full cost of success, to take a single backward step. Any wavering on the part of the federal government, in respect to this question, must have the effect of prolonging indefinitely, and intensifying the unhappy condition of business and of industry, under which we have suffered for several years. There can be no confidence in private transactions, if the general government set an example of a want of good faith. And it must always be borne in mind, in reference to the present discussion as to the precise meaning of the government obligations, that the government debt cannot be enforced; there is no arbiter or tribunal to decide between the government and its creditors; the debt is purely a debt of honor; in such cases the debtor cannot keep himself clear of the imputation of bad faith, except by ruling all doubtful questions as to the meaning of his promise against himself. I trust that there will be wisdom enough at Washington to avoid hindering our present hopeful progress toward specie payments, and that the laws of the general government, and those of our own State, on this subject, will continue to be, as they now are, in harmony.

## BOUNDARY LINE BETWEEN NEW YORK AND CONNECTICUT.

The Legislature has heretofore passed resolutions directing the Attorney General to take legal proceedings to determine the boundary line between New York and Connecticut through Long Island Sound. The subject has been fully examined on behalf of the Attorney General, and the result of such examination submitted to me. I am of the opinion that it is best that this question should be settled by a commission, to be appointed by the two States. I am informed that the Governor of Connecticut concurs in this view, and will so advise the Legislature of that State. I, therefore, recommend the appointment of commissioners to act with commissioners to be appointed by Connecticut, to determine the boundary line between the States of New York and Connecticut through Long Island Sound.[11]

## THE ANTIETAM NATIONAL CEMETERY.

I have received a communication from the Secretary of War, stating that Congress has made an appropriation for the maintenance of the Antietam National Cemetery, to be paid, upon condition that the legal title to the cemetery shall be conveyed to the United States. The title has been held by the State of Maryland, as trustee for the several States that contributed towards its establishment. The Secretary of War requests that an act be passed by the Legislature of this State, consenting to the transfer of the property by the State of Maryland to the United States. The draft of such an act as is desired accompanies the communication. It will be submitted to the Legislature, and I recommend its early passage.[12]

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[11] See special message of April 3, transmitting resolutions adopted by the Legislature of Connecticut. "An act concerning the limits and jurisdiction of the State of New York and the State of Connecticut" was passed on the last day of this session, and was sent to the Governor as a thirty-day bill, but was not approved by him. It appears in the list of bills not approved, dated June 14, 1878, but without special comment. The bill authorized the Governor to appoint three commissioners to negotiate and agree with commissioners from Connecticut concerning the boundary between the two States, and report their agreement to the Legislature.

The next year, 1879, by chapter 166, passed April 16, the Secretary of State, Attorney General, and State Engineer and Surveyor were constituted a commission to act with commissioners from Connecticut in ascertaining the boundary between this State and Connecticut, both upon the west and south of Connecticut. Any agreement to be made by the commissioners representing the two States was subject to the approval of the Legislature. The agreement concerning the boundary was reported to the Legislature February 11, 1880, and by chapter 213, passed May 8, of the laws of that year, was ratified and confirmed. This act defines the boundary between the two States as determined by the commissioners.

## THE NEW CAPITOL.

It is now about ten years since the construction of the New Capitol was commenced. Up to the 15th of December, 1877, the sum of $8,276,615.36 has been expended upon it. This is a larger amount of money than was expended on the original construction of the Erie and Champlain canals, and yet there is not a single apartment in the building completed. It seems beyond the reach of human foresight to discover when it may be finished, or the amount of money which will be required for that purpose. I respectfully urge every member of the Legislature to go through the vast pile of brick and stone, and judge for himself what are the prospects which lie before the people in regard to the enormous expenditures yet to be made. In my message disapproving an appropriation of a million of dollars at the last session of the Legislature, I stated fully my views in regard to the whole subject. I believed that it was better for the reasons there given, that no further appropriation should be made, at least until there was an improvement in business and in the capacity of the people to pay taxes. I believed then, as I believe now, that a Capitol of proper size and of proper appearance, with far better conveniences for the transaction of public business, and far less expense in the maintenance of it, could be built, finished and furnished for much less money than it will require to complete the present building in all its vast and useless proportions. The views expressed by me in that message have been fully confirmed by repeated personal examinations of the building. There is not the least reason to believe that there is, in the whole State, any man of common sense who would now advise the commencement and construction of such a building as the New Capitol if it were an original and open question. The one only argument for going on with it is that if we do not proceed we lose all the immense amount that has already been expended. This one consideration induced the Legislature to make an appropriation of half a million of dollars, instead of the million, to which I had objected. Yielding to the conviction of the Legislature that for the reasons stated, the work must go on and the expenditures continue, I approved the appropriation for the half million. I, however, accompanied the approval with a recommendation that the money should be devoted to the completion, as far as possible, of the Assembly chamber, for the purpose of bringing some part of the building into use at the earliest practicable day and testing its adaptation to the uses for which it was intended. This recommendation was followed, and with very good results. The Assembly chamber is so far advanced, that if it is determined to go on with the work, it can undoubtedly be ready for occupation on the 1st of January, 1879. The expenditure of the half million appropriated, of course increases the strength of the argument to which I have referred, in favor of proceeding. If it shall be the judgment of the Legislature, that a further appropriation shall be made, I recommend that it be confined to the completion of the Assembly chamber, the Senate chamber, and possibly one or two other apartments, and that henceforth the work proceed by the completion of certain sections of it which may be brought into use, instead of spreading the expenditures over the whole building, large portions of which are not needed and cannot be used if completed.

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[12] An act "to facilitate the transfer to the United States of the title to the Antietam National Cemetery in the State of Maryland," chapter 4, passed January 19, 1878, authorized the State of Maryland to convey to the United States "all the right, title and interest of the State of New York in and to the land occupied by the Antietam National Cemetery."

The commissioners now in charge of the work have been attentive and faithful in the performance of their difficult duties. They are of the opinion that it is very desirable that whatever appropriation the Legislature may think proper to make should be made at an early day in the session in order that a portion of it may be used for stone cutting during the winter. Their recommendation in this respect has my approval.[13]

## OTHER PUBLIC BUILDINGS.

I would also make the same suggestion with reference to any appropriations which are to be made for insane asylums, or other public buildings. The practice of making the appropriation in the supply bill in a hurry and confusion of the closing hours of the session, is a very objectionable one. They will be more likely to receive the consideration and care which they should have, if brought forward early in the session. At the same time, in view of the general pecuniary embarrassment, I have to urge upon you the greatest possible frugality consistent with public interests.

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[13] Chapter 7, passed January 24, appropriated $300,000 for continuing work on the New Capitol, with a provision that it should be expended toward the completion of the Assembly and Senate chambers, and the commissioners were directed to "insure the completion and furnishing of that portion of the New Capitol containing the Assembly chamber for occupation on the first day of January, 1879, by the Senate and Assembly."

The same act directed the demolition of buildings known as Congress Hall, within sixty days after the adjournment of the Legislature.

The supply bill, chapter 252, contained an additional appropriation of $700,000 for continuing work on the New Capitol, directed the commissioners to provide furniture for the part of the Capitol which by the former act was required to be ready for use on the 1st of January, 1879, and the commissioners were charged with the care of the north center portion of the New Capitol.

On the 14th of May, the Legislature adopted a concurrent resolution, declaring that from and after the 1st day of January in the year 1879, the New Capitol building, in the city of Albany, shall be and the same is hereby declared to be the Capitol of the State of New York."

## CONCLUSION.

The importance of your labors, the dignity and responsibility of your position, are sufficiently attested by the fact that you are the legislative representatives of nearly five millions of people. The population and wealth, for which you are to care, far exceed those of the republic in the days of Washington. This would be a great and sacred trust at any time. It is doubly so now, when the people are struggling to stem the tide of corruption and crime, which, originating during the war, has since so widely deluged the State and nation, as to shake, at times, the faith of the most hopeful. In itself the war was a small evil compared with its resulting demoralization. The light regard for constitutions and the law, the debased and inflated currency, and finally, the open trifling with the public faith to which it gave birth, have wrought more harm to the people than even its mighty sacrifice of blood and treasure. Excessive luxury in living sprang from imaginary wealth, and linked with this came fraud, perjury, forgery and defalcations, breaches of trust in private business and among public servants standing beneath the obligations of official oaths. The rapine and plunder which, for twelve years, desolated the Southern States, the common treason to official trusts, and frequent use of public place for private gain, have worked deep injury to the nation's sense of right. Even now, millions of voters smart at the conviction that they have been defrauded of their choice in a national election, and robbed of the right of suffrage guaranteed them by their Constitution and the law. They believe that the presidency of the republic is held by one not elected to that office, and without moral title to its powers and its honors. This belief is shared by a majority of the people. They yield obedience to an Executive of fact but not of right that they may save the land from anarchy. They none the less charge this great crime upon those high officials by whose conspiracy against the law it was made possible. That these their servants should have certified falsehood to be the truth gives them deep sense of wrong. They know that this defiance of the people's will if it be made a precedent will bring our government to a swift and certain end. For all these reasons the state of popular feeling is not what those who love our institutions long to see it. But, in spite of these discouragements, there are good grounds of hope for the future. A sounder state of public opinion is surely, though slowly, developing. Necessity with many, and good inclinations with more, are leading to rational living and closer economy of expenditure. The people demand more faithful service of public officials. The prison doors are closing behind many of the swindlers who from the ranks of so-called good society, have sought to make crime respectable, and we may well believe the day of retribution to those who falsify and corrupt the ballot-box, is near at hand. The long despotism of military occupation in the Southern States is a thing of the past. As the chosen representatives of the people, you are now called upon to take your stand in the unending conflict between right and wrong. I need not remind you that the State of New York has behind it a long and honorable history. It has stood foremost in every effort to elevate the people, to purify the public service, and to preserve unstained the institutions of our country. It is given to you, in the discharge of your high duties, to devote again the voice of the State to the cause of public morality and official virtue. I do not doubt that you will bring to this great work your best energy and most enlightened efforts, and to that end I earnestly bespeak for you the guidance and inspiration of the Divine Being with whom alone dwells perfect wisdom.

L. ROBINSON.

## SPECIAL MESSAGES.

January 11. To the Assembly: Transmitting the annual pardon report.

January 15. To the Assembly: Transmitting the report of the acting captain of the port of New York of the amount of fees collected by him during the year 1877.

January 21. To the Assembly: Transmitting a communication from the United States Department of Agriculture. The Legislative records do not contain this communication.

January 29. To the Assembly: Transmitting the annual report of the Cooper Union.

February 6. To the Assembly: Transmitting the report of the commissioners to purchase an executive residence appointed by chapter 128 of the laws of 1877.

The Governor, the President *pro tem.* of the Senate and the Speaker composed the commission. In their report, which bears date December 31, 1877, they say they had purchased the residence then occupied by the Governor known as 138 Eagle street in the city of Albany, together with the furniture, green house and stable, with about one and three-quarters acres of ground. The act of 1877 appropriated $50,000 for the purchase of an executive residence. The price paid was $45,000.

February 15. To the Senate:

**Veto of a bill entitled "An act to legalize and confirm the official acts of John L. Smith and Martin W. Noble as commissioners of excise of the town of Bath, in the county of Steuben, and to enable them to qualify as such commissioners."**

"This bill seeks to legalize the acts of certain excise commissioners in the town of Bath, elected in the spring of 1877, who failed to file the bond required by law and take their official oath for many months after their election. It further authorizes them, within twenty days after the passage of this act, to take and file the oath and execute and file the bond required by law.

At least two objections to the bill suggest themselves at first sight. It is an example of the worst class of special legislation, and it is, moreover, of doubtful constitutionality. Its object is to continue in office commissioners who have failed to qualify according to law. Chapter 444 of the Laws of 1874 provides that the excise commissioners shall execute a bond as therein specified, but does not fix any time within which it must be filed. The Revised Statutes provide that in such cases the bond must be filed within fifteen days after the officer shall be notified of his election or appointment, or within fifteen days after the commencement of his term of office, in default of which the office shall be deemed vacant. The law of 1874 provides the manner in which all vacancies in the office of excise commissioner shall be filled. This bill is, therefore, an attempt by the Legislature to elect local officers instead of leaving the vacancies to be filled in the usual manner. Upon the second point it may be said that conceding these offices to be vacant, the Legislature derives its power to fill them from section 2, article 10 of the Constitution, which provides that all such officers shall be 'elected by the people, or appointed, as the Legislature may direct.'

By the law of 1874, the Legislature have directed how vacancies in these offices shall be filled, and they have been filled at an election held in accordance with the statute. It seems to me that the Legislature have already exercised the power of direction contemplated by the Constitution,[f] and it is, to say the least, extremely doubtful whether they have the power now to recall the action taken under the statute of 1874 and exercise a special power of appointment. The officers just elected are not the same persons sought to be appointed by this bill, and the present bill, if it be approved, will simply plunge the excise matters of the village of Bath into needless confusion and litigation."

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[f] Const. 1846, art. 10, § 5.

The bill was not passed over the veto.

February 21. To the Senate:

"EXECUTIVE CHAMBER,
*February* 21, 1878.

"I perform an unpleasant but imperative duty in transmitting to the Senate the accompanying charges of official misconduct on the part of Mr. John F. Smyth, Superintendent of the Insurance Department.

The charges are made by the Comptroller and are based upon facts stated in a report made by him to the Assembly in answer to a resolution of that body, a duplicate of which report is annexed to and forms a part of the charges transmitted herewith.

The Insurance Department was established, ostensibly at least, for the protection of policyholders, stockholders and the public generally, against any improper or unlawful conduct on the part of the Insurance Companies. Within a few years past the Legislature has found it necessary to guard by stringent enactments against abuses on the part of the Superintendent of the department. By chapter 593, Laws of 1873, cited in the charges, appropriate and stringent provisions were made for this purpose, forbidding the payment or presentation for payment of any bill for services in examinations by an attorney or appraiser of the Insurance Department until the same had been approved by the Superintendent and audited by the Comptroller, and declaring that any party violating this provision should be deemed guilty of a misdemeanor. Under this statute, the affairs of the department were conducted until the present Superintendent entered upon the duties of his office. Finding these provisions not in accordance with his views, he made an effort to have them changed by the Legislature. Failing in that, he seems to have gone on in open and flagrant defiance of them. By reference to the Comptroller's report it will be seen that a certain class of charges aggregating about $9,000 have been submitted to and audited by the Comptroller, whilst in the case of numerous companies other large and grossly improper charges amounting to over $64,000 have been presented and approved, or paid without approval, but with the sanction of the Superintendent, without having been audited or presented to the Comptroller for audit as required by the statute.

I am informed that the material facts supporting these charges have been substantially admitted by the Superintendent before a committee of the Senate. In each of the cases specified, the Superintendent, under the statute referred to, was guilty of misdemeanor. If this contempt of legislative control is to be suffered, there is no department of the State government which may not likewise rebel against the law. The imposition of statutory restraints and penalties will be worse than useless. The same practice which has taken over sixty thousand dollars from the Insurance Companies, without warrant of the law, will justify any drafts which a despotic or corrupt Superintendent and his favorites may choose to make, and a system of official brigandage will thus be crystalized within the government. Every dollar of the sums set forth in these charges was lawlessly abstracted from moneys held in trust. The Superintendent, his attorneys and appraisers could get no title to it, except by the law. Defying this, they had no better claim than strangers. The offense is aggravated as that of the head of a State Department, who has sanctioned the pillage of the funds committed to his care. It seems to me that his continuance in office, under such circumstances, would bring contempt upon the law and upon the Legislature.

I therefore recommend the removal of the said John F. Smyth from the office of Superintendent of the Insurance Department.[14]

L. ROBINSON."

For the Comptroller's communication to the Governor and to the Assembly, see Senate Document, 1878, No. 26.

March 14. To the Senate:

**Veto of a bill entitled "An act supplemental to the Code of Civil Procedure."** [See note 10.]

"The Constitution of 1846 provided for the appointment of three commissioners, whose duty it should be 'to reduce into a written and systematic code the whole body of the law of this State, or so much and such parts thereof as to the said commissioners shall seem practicable and expedient, and the said commissioners shall specify such alterations and amendments therein as they shall deem proper, and they shall at all times make reports of their proceedings to the Legislature, when called upon to do so; and the Legislature shall pass laws regulating the tenure of office, the filling of vacancies therein, and the compensation of said commissioners; and shall also provide for the publication of the said code, prior to its being presented to the Legislature for adoption.'[g] It in like manner directed that the Legislature at its first session after the adoption of that Constitution, should provide for the appointment of three commissioners to 'revise, reform, simplify and abridge the rules and practice, pleadings, forms and proceedings of the courts of record of this State, and to report thereon to the Legislature, subject to their adoption and modification from time to time.'[h] In obedience to these requirements of the Constitution, the Legislature on the 8th day of April, 1847, passed an act by which Reuben H. Walworth, Alvah Worden and John A. Collier were appointed commissioners, to be styled 'Commissioners of the Code' to perform the duties specified in the 17th section of the first article. By the same statute, Arphaxed Loomis, Nicholas Hill, Jr., and David Graham were appointed commissioners, to be styled 'Commissioners of Practice and Pleadings,' in accordance with the provision of the twenty-fourth section of the sixth article, to perform the duties in that article specified. These commissioners and their successors appointed according to law, addressed themselves to their task with zeal and ability. In 1848 the commissioners of Practice and Pleadings reported a partial code, which, on the 12th of April in that year, was enacted by the Legislature as chapter 379 of the laws of 1848. These same commissioners reported in 1849 completed codes of civil and criminal procedure. By chapter 438 of the laws of that year, the code of civil procedure, as amended, constituting in all an act of less than a hundred pages, was established. With some subsequent amendments, this one statute has constituted the main body of our civil practice from that day to this. The commissioners of the code, appointed in pursuance of the seventeenth section of article first completed and submitted at different times, codes of the common and statute law, in accordance with the provisions of the Constitution, but their work has never been adopted, or considered by the Legislature, although the intent of the Constitution that such a code should be enacted, is apparent. On one or two occasions, action in regard to them has been urged upon the Legislature by the Executive, but no earnest steps, looking to their enactment, have ever been taken. The great aim of the Constitution of 1846 was to secure a symmetric system of jurisprudence, including a code of political, criminal and civil law. The adoption of the original Code of Procedure was a partial accomplishment of this constitutional purpose so far as the practice law of the State was concerned. The intent of the seventeenth section of the first article has never yet been fulfilled. Realizing this defect in the law the Legislature, on the 2d of March, 1870, passed an act authorizing certain commissioners to 'revise, simplify, arrange and consolidate all statutes of the State of New York, general and permanent in their nature.' And in performing this duty 'to bring together all statutes, and parts of statutes, which, from similarity of subject, ought to be brought together, omitting redundant or obsolete enactments, and making such alterations as may be necessary to reconcile the contradictions, supply the omissions and amend the imperfections of the original text.' No fair man doubts that the aim of this act was to revise the existing general acts, and not in any way to change our settled system of legal practice. But instead of applying themselves to this needed revision of our scattered and confused statutes, the commission turned its back upon its duty, and set about an entire upheaval of our legal procedure. In 1876, they submitted the first installment of their proposed work in the shape of a substitute for part of our practice law consisting of 1,496 sections. This the Legislature of that year enacted. It was not, however, allowed to take effect until September, 1877. The present bill of 1,824 sections is the remainder of the proposed substitute. I had hoped that in the event of the enactment of this supplemental report of the revisers I might find in it advantages so far outweighing its demerits that I might conscientiously approve it. I regret to say that my convictions forbid this. The bill contains so many and grave defects that I should fail of my duty if I consented to its enactment.

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[14] The Senate on the 5th of March, 1878, began the consideration of the charges against Mr. Smyth, Superintendent of Insurance. He was not removed, but the record does not give the vote.

[g] Const. 1846, art. 1, § 17.

[h] Const. 1846, art. 6, § 24.

My first objection is, that it was never constitutionally passed. The journal of the Senate shows that its reading was dispensed with on motion in that house. Section 15, of article 3, of the Constitution, provides that 'no bill shall be passed unless by the assent of a majority of all the members elected to each branch of the Legislature, and the question upon the final passage shall be taken immediately upon its last reading, and the yeas and nays entered on the journal.' This section manifestly contemplates a reading, and under its provisions no valid vote could be taken on this bill until after it had been read. The 'last reading' of a bill is not, and never has been by usage since the adoption of the Constitution, a reading by a title only. I know no competent authority which holds that the Constitution does not intend an actual reading of every bill before its passage.

Croswell's Manual, at page 21, well expresses the general understanding of the Constitution in the use of the following language: 'Bills have sometimes, by unanimous consent, been read a third time by their titles — for instance, as the Code of Procedure, and occasionally bills of less dimensions, such as city and village charters. But this mode of reading bills a third time has never grown into a practice; and because it is, confessedly, in direct and clear contravention of the spirit and letter of the organic law.' Even if it be claimed that the constitutional mandate is directory only, it does not relieve the Legislature from the obligation to obey an explicit requirement of that instrument. Were I to sign this bill, I should but open the door to interminable controversy over the law which is itself to regulate all litigation. The entire practice of the State might be thrown into confusion and uncertainty. The constitutional objection as to its reading might be easily obviated by its return for correction in that respect, but the broad fact remains that this bill, the most important act of the entire session, a bill which touches the person, the property, the rights and the liberty of every citizen of the State, which more nearly than any other possible enactment concerns the welfare and prosperity of our people, has been passed through both houses of the Legislature, without a reading, in less time than it would require to read twenty of its 1,824 sections. Probably not more than two or three members of the Legislature have read a tenth part of its contents, and therefore the assertion is warranted that the bill has in no sense received the intelligent approval of either house.

I am aware of the very great importunity with which this act has been urged upon the Legislature, and one strong argument in its favor has been that thirteen chapters had already been adopted, and that great harm would result unless the completion of the system was secured by the adoption of the present act. How utterly unfounded this pretence is cannot be better shown than by a quotation from the report of the commissioners to revise the statutes, transmitted to the Legislature January, 1876, with the first thirteen chapters. The report contains the following language:

'It is provided by laws of 1873, chapter 467, section 2, that when the commissioners to revise the statutes shall have completed one or more distinct parts or portions of their work, which may, in their opinion, be conveniently enacted into laws, before the completion of the entire work, they may submit the same to the Legislature, in print, with the appropriate repealing, supplemental, or temporary acts, also in print.

Pursuant to that provision, the commissioners to revise the statutes herewith submit to the Legislature, in print, and in the form of a bill, consisting of thirteen chapters, containing 1,495 sections, several distinct portions of their work, which may, in their opinion, be conveniently and advantageously enacted together into one law, before the completion of the entire revision.'

A further argument against the bill in my judgment is that of the petitions and suggestions gathered in its favor, scarce a single one fails to qualify its approval by the suggestion that considerable amendments are necessary. All discussions of this act admit that, if passed, it must be at once largely amended. It is a serious consideration in regard to it, that its passage is simply the prelude to its material alteration. When the report of the revisers was first submitted to the last Senate, the judiciary committee saw its imperfections, but believed their correction was feasible. With zeal, ability and industry, they labored to attain this end, and in the scanty time snatched from Senatorial duties, they made nearly three hundred amendments to the bill as reported by the revisers. No better commentary on the errors of the report could be made. But the opportunities of the Senate committee were totally inadequate to the proper performance of this great labor. The hundreds of amendments which they made alone saved the bill from utter condemnation. They were not able to put it in any shape fit for adoption, and it is not in such shape now.

As particular objections, I note:

Section 1501 provides that ' an action of ejectment may be maintained by the grantee, his heir, or devisee, in his own name, although at the time of the conveyance under which he claims the property conveyed was held adversely to the grantor.' This section is intended to dispose of the last remnants of the law of champerty, a principle which antedates by centuries the foundation of our government. Under this sweeping section all the gross evils which are now restrained by the Revised Statutes will be let loose upon the community. It is already a favorite plan of blackmail in large cities to take a deed of real estate to which the grantor has not the shadow of a claim, and on that pretended title to commence an action against the legal owner, file notice of its pendency and then make offer of settlement at a less figure than it would cost the unfortunate owner to obtain a legal opinion as to his title or to dismiss the complaint. If the property concerned be very valuable, as is generally the case, great pecuniary loss often results from these speculative actions by irresponsible swindlers. The enactment of this section gives to the grantee the benefit of an act which the Revised Statutes declare to be a misdemeanor. The State is then left in the anomalous position of declaring to this grantee, 'Your purchase from a party out of possession is a crime in the eye of the law, yet that same law will assist you to reap the benefit of the crime it condemns.' It is plain that this section opens the door to a surreptitious assault on the title of every real estate owner, great or small.

Again, sections 1690–1736 make extended and particular provision for what is called 'an action to recover a chattel.' This is a long and clumsy substitute for the common law action of replevin, and the action known for many years as the 'action to recover the possession of personal property.' Section 3307 declares that 'personal property' includes 'money, goods, chattels, things in action and evidence of debt.' It is apparent, therefore, that this new action to recover a chattel is far less comprehensive than the action of the old law. If this be, as its language imports, so great a curtailment of the action of replevin, it is a grave defect of the present bill. The Revised Statutes clearly recognize the distinction between goods and chattels, and the result of this unwise and unnecessary limitation of an every day action will be great litigation and inconvenience. Aside from the general objections to the restriction of the action itself, the proceedings prescribed in it are in several cases far inferior to those of the statute it is intended to supplant.

The third subdivision of section 2895 provides that 'an order of arrest may be granted in an action brought to recover damages for an injury to property other than the wrongful taking, detention or conversion of personal property.' Subdivision 10 of section 3307 declares that 'an injury to property' is an actionable act whereby the estate of another is lessened other than a personal injury or a breach of contract. A fair construction of these two clumsy sections would render every party liable to arrest who had committed ' an actionable act whereby the estate of another was lessened.' It does not seem to me that the liberty of citizens should be put in danger by the errors and complications of such a statute as this. Many acts may readily be imagined which are actionable and lessen the estate of others, and yet furnish no sufficient reason for the incarceration of the person who commits them. More than all, the fixing of an unyielding definition to the words ' injury to property ' seems likely to lead to much confusion and hardship.

Very grave questions arise on the chapter in regard to the powers of Surrogates. The bill proposes to confer upon the Surrogates nearly all the equitable powers which, from a remote period, have been exclusively vested in the chancellor, and subsequently in the Justices of the Supreme Court. I cannot believe that such fundamental legislation should be thus hastily adopted. It is a recognized fact that the Surrogates of the various counties of the State are not generally chosen with the same care, nor expected to possess the same high qualifications, as Justices of the Supreme Court. They receive less compensation, are not expected to devote themselves exclusively to their duties, and exercise a jurisdiction of far less scope. To cast upon them, in a moment, all the great powers of the Supreme Court in regard to this most complicated and abstruse branch of the law, seems to me extremely unwise, and if not directly athwart the letter of the Constitution, plainly contrary to its general intent.

Again, the chapter on summary proceedings to recover possession of land, substantially destroys the useful and inexpensive method of obtaining possession. It cannot fail to greatly aggravate the delay and difficulty of re-possession on the part of landlords, and in the end increase the expense and hardship to the tenant. A careful comparison of the old and the new law by the members of the Legislature will, I think, convince them of the unwisdom of the provisions of this branch of the bill.

A general comment to be made upon the whole act is that, while professing to be a code of procedure, and to deal only with the maintenance of rights, it constantly oversteps its proposed limits, and deals with the law of rights itself. There are many striking instances of this. My attention has been attracted particularly by the contents of sections 1907 and 1908, because I believe if the bill had been read these sections would not have been left in their present form. They are intended as an enlargement of the 'Civil Damage Act,' so called, in chapter 646 of the laws of 1873. The first section of that act contains the following language:

'Every husband, wife, child, parent, guardian, employer or other person, who shall be injured in person or property, or means of support by any intoxicated person, or in consequence of the intoxication, habitual or otherwise, of any person, shall have a right of action in his or her name against any person who shall by selling or giving away intoxicating liquors, cause the intoxication in whole or in part of such person or persons. Section 1907 of this act commences as follows: 'Any person may maintain an action to recover damages for a personal injury, an injury to property, the breach of a contract or the diminution of his or her means of support, arising in consequence of the drunkenness, habitual or otherwise, of another, against the person who caused the drunkenness, wholly or partly, by giving or selling to the drunken person intoxicating liquor; and also against the owner of the premises where the liquor was given or sold if he leased them to the giver or seller, or permitted the latter to occupy them knowing that intoxicating liquors were to be sold therein.' To the former causes of action this section adds the right to recover damages for a 'breach of contract' arising from the intoxication referred to. Who shall determine what is a breach of contract within the purview of this section? By what principle can any court determine that such a breach of contract arose in consequence of the drunkenness, habitual or otherwise, of the intoxicated party. The power of great injustice is hidden in this section, if it be ever enforced, and it may be enforced by imprisonment, against the most innocent party, under the provision of section 2895 of this act. The re-enactment and enlargement of this law in this arbitrary form is a step which I do not believe the Legislature intended to take. Whether this addition to the law, imposing, as it does, enormous liabilities, is wise or not, this statute is certainly no place for it. The Legislature ought not to and would not enact it without discussion or consideration, and the fact that it has been inserted in the present act, and passed without discussion or mention, is an indication that the Legislature do not understand the contents of the bill.

Another illustration of this same evil is found in the virtual repeal of chapter 33 of the laws of the present session, passed February 25, 1878, by which the Legislature materially amended the law for the protection of female employes in the city of New York, designing to extend over this class a larger legal protection. Yet the present act (section 3221) abrogates this statute, and restores the scanty provision of the previous law on the subject. I cannot believe that it was the design of the present Legislature to repeal its own act scarcely a fortnight after its passage. Yet that is the clear effect of this section. And the serious question left to our consideration is, whether there may not be yet more sweeping provisions of the general law hidden in this voluminous bill, since the most cursory perusal develops so much that is mischievous.

Section 3253 provides that 'in an action brought to foreclose a mortgage upon the real property, or for the partition of real property, or in a difficult and extraordinary case where a defense has been interposed in any action, the court may also in its discretion award to any party a further sum, as follows:

'1. In an action to foreclose a mortgage, a sum not exceeding two and one half per centum upon the sum due, or claimed to be due, upon the mortgage.

'2. In any other case specified in this section a sum not exceeding five per centum upon the sum recovered or claimed, or value of the subject matter involved.'

This was at one time section 309 of the old practice, and authorizes an allowance limited only by two and a half per cent in the first case, and by five per cent in the second, of the amount of the recovery or claim, in the discretion of the court. This was the rule until recently. So gross had become the abuses under this section, however, that the Legislature, in 1876, interfered and put a limit to the power of the court in this respect. By chapter 431 of the Laws of 1876, the amount of this discretionary allowance, under the first clause of the section, could not exceed $200, and under the second could not exceed $2,000. In view of the very great scandals which led to the repealing law of 1876, and the almost constant abuse of the power of allowance in the larger cities, it seems extremely unwise to return to the evil of which we are barely rid. The right of discretionary allowance is a dangerous one to vest in the hands of any tribunal, and now that the amounts in litigation frequently reach many millions in a single case, the power of giving a five per cent toll to any party may easily become the means of great injustice and abuse. Again, section 3288 of the present bill provides that 'the fees of a referee appointed to sell real property pursuant to a judgment in an action, must be fixed by the court at such a sum as it deems a reasonable compensation for his services, not exceeding $250.' The Legislature of 1876 also deemed this subject worthy of their attention, and by the same chapter above mentioned, limited the total fees in such cases to $50. I do not know of any reason for extending this limit, while there are many valid ones against it. I know of no petition or request for it. There would seem to be no call for advancing the pay of referees five hundred per cent at this particular time. The plunder of mortgage debtors for this ministerial class of services had become a great evil when it was stopped by the act of 1876. It may be claimed that the court has power to prevent exorbitant charges, but that is a power which the court had in the worst days of reference, extravagance and favoritism. The ordinary service of sheriffs and referees, in those matters, exhausts but an hour or two, and the old limit of $50 is abundantly liberal. There is more reason to reduce it 50 per cent than to raise it 500.

Section 2563 is as follows: 'In addition to the sums specified in the last three sections, the surrogate, upon rendering a decree in a contested cause, may, in his discretion, allow to a party, and include in that party's costs, a sum consisting of a percentage upon the amount or value of the estate or fund in controversy, but the entire percentage allowed to all parties cannot exceed the percentage which can be allowed to a party in an action in the Supreme Court.' This is a new and thoroughly mischievous provision. It gives to every surrogate, in his discretion, the power of shaving an estate to the extent of five per cent., and dividing the proceeds at will, if there has been a contest over its administration. The power thus granted in the large cities will be enormous. At the present time two contested will cases are pending in the city of New York, in each of which the estate in question is said to exceed sixty millions of dollars. Is it possible that the Legislature intend to risk in the surrogate the power to take from each of those estates three millions of dollars, and distribute it at his will among the parties to the suit? Yet that very power is given by this section. It will be said that such allowances would never be made, but it is not wise, in my judgment, to confer upon any judicial officer, powers which will set before him a continual temptation. The provision will, moreover, serve to inspire far more numerous litigations over the estates of dead men. As a general comment upon the four sections last quoted, it may be said that the entire tendency of this portion of the act is to restore the vicious practice of large allowance by courts to attorneys, a practice which the people have recently and sternly rebuked, to which they are strongly and properly opposed, and a revival of which they are not disposed to tolerate. The entire system of discretionary allowances is wrong in principle, and ought to be abolished. It is of itself a sufficient argument for the refusal to enact any bill, that one of its leading features is the revival and aggravation of this practice. It tends to bring judges, courts and lawyers into bad odor and disrepute. It is not possible to keep it free from great evils, especially where, as in this act, no substantial limit is set to its operation. The spirit of our law is thoroughly opposed to giving a court power to impose arbitrary penalties upon suitors who seek its protection in good faith. The law is free to every citizen in theory, and should be so in fact.

Another line of objection to the whole bill lies in the frivolous changes of expression where no change of meaning is desired or intended. Why this course should have been taken is beyond the comprehension of ordinary minds. The language of the former practice law has been the subject of repeated construction, and it has now, for nearly every section, a judicial interpretation. Unless some change of intent is sought, it is worse than folly to tamper with its words. Illustrations of this assertion might be adduced almost without limit, to show the unwisdom of most of these mere verbal changes. It is enough to say that of the hundreds of sections copied in substance from the old law, very few are unchanged in form. The revisers state that it was not designed to change the meaning by such modifications of the expression, but the most sanguine can hardly expect the courts to hold systematically that the Legislature changing words had no design to affect the purport of the law. This unnecessary mutilation only renders it more certain that the effect of this bill would be to originate a library of practice reports and books to which even our present possessions in that line would bear no comparison.

I might go on indefinitely in the citation of errors, incongruities and evils such as these. The act is full of them, but neither my time nor the limits of such a message as the present permit further detail.

The Code of Procedure of 1848 and 1849, although in itself a model of clearness and accuracy, was fixed in meaning and established in use only at enormous expense to the people of the State. At the cost of many millions of dollars, at the expense of substantial rights, it had become inbedded in the jurisprudence of the State. It was understood by the courts, comprehended by the lawyers, checked by the restrictions experience had placed around it, and afforded prompt and certain redress for civil wrongs. Its rules contained in a statute of less than five hundred sections, with some well understood provisions of the Revised Statutes, had, up to the time of its partial repeal in August last, fully covered the needs of our legal practice. It is now proposed by this bill, in addition to the one which has preceded it, to overturn this entire system, supplant a practice which we do know by another of 3300 sections and 1,200 pages which we do not know, and plunge the whole operation of the civil law, the entire subject of the redress of grievances, into utter chaos. The constructions which have obtained for thirty years are to be uprooted. Laws of personal right are to be injected into the rules of practice. The salutary checks which have been put upon the expenses of litigation are to be thrown off, and the staggering business of the State is to be laid under heavy contribution to interpret at enormous expense a new and unwieldy system of practice-law. To this outrage upon the people of the State, I cannot consent to be a party. The law of remedies bears most heavily upon the debtor class in every community. Upon them at least falls the burden of costs and fees, allowances and disbursements. First or last, all the expenses of litigation are borne by them. It would be unjust, even in a time of great prosperity, to ask them to pay the great expense of putting a judicial construction on such an act as this. To ask them to do it now would be simply suicidal. If our practice needs correction, it is in the line of making the enforcement of private rights and private contracts less onerous to the obligors. It is surely neither wise nor just to put upon them the incubus of such a monster as this. I most earnestly urge the Legislature to take heed to the importance of this matter. I know that this commission and its folly have cost the people of this State two hundred thousand dollars in money, and that although limited to three years it has consumed eight. I concede the truth of all that may be said of the injustice of throwing away so large a sum, but it is far wiser to let it go than to add to its loss the greater misery of endless litigations to determine what our law shall be. There is, in my judgment, but one plain and proper course to take, and that is to repeal the thirteen chapters of the new code which took effect on the first of September last, and to re-enact the code of procedure as it then stood. After most careful reflection, and consultation with the very best minds of the legal profession, I am sure that I only do my duty in most respectfully, but earnestly, appealing to the Legislature to take this course, the only one by which, it seems to me, the direst evil and confusion can be avoided."

This bill was not passed over the veto.

March 19. To the Senate:

**Veto of bill entitled "An act to amend section 1, article 1, title 1, chapter 9 of Part 3 of the Revised Statutes, entitled 'Of the Writ of Habeas Corpus and Certiorari in certain cases.'"**

"The rule which prevents persons convicted of an infamous crime from testifying in courts of justice is as old as the foundations of our law. It was established in wisdom and has been approved by experience. Its theory is that a person who has been found guilty of murder, robbery, arson, rape, false swearing and other atrocious crimes, is not worthy of belief, and that testimony thus born of infamy should not be heard to contradict the word of honest men, and that he who had criminally taken the life or the property of one citizen should not be allowed to swear away the rights of another. The disqualification of this law has long protected the rights of the innocent from the perjury of the guilty.

But among the many wise and well settled prescriptions of our law, swept away by the thirteen chapters of the new Code of Procedure which went into effect on the first of September last, this disability of the infamous was abrogated. Section 832 of that Code removes the disability, and places the convicts in all our prisons on the same level with the best men who are called as witnesses in the courts. Besides the purest of citizens the worst of felons may now demand that his testimony be taken in every court of justice. It is not pertinent that I should discuss this innovation further than to make clear the faults of the bill herewith returned. Under the section of the Revised Statutes which this bill proposes to amend, the courts have no power to take, on *habeas corpus,* from the walls of a prison a condemned felon during the term for which he has been sentenced, so that despite the section of the new Code which I have quoted, the courts have still no power, under the old statute, to take possession of a convict to secure his evidence. The present bill removes that disability of the courts. If it be made a law, every County and Supreme Court judge, every judge of any local court of record, may order any or all prisoners confined in prison, penitentiary or jail, under sentence of death for murder or arson, under sentence of life imprisonment for manslaughter, rape, perjury, robbery or other crime, to be taken from their cells to the remotest limits of the State, and there be held at pleasure of the court to testify in any trivial suit between two private parties for their own accommodation. I believe that this is not only unwise, but extremely wrong. The prisons and penitentiaries of our State contain over ten thousand convicts. At least one-half of these are persons whose liberty is dangerous. Many hundreds are under life sentences for the vilest and most brutal crimes. The effort to convey them on long journeys through all parts of the State will inevitably lead to many escapes, and will endanger the lives of those who have them in charge or such as may assist them. Yet by the terms of this bill, whenever an apparent case is made, the court is bound to order such a bringing of the felon as a witness. It may take the murderer from his cell the day before his execution. It may call any number of convicts from our prisons at once. It may subject the officers of our penal institutions to all the dangers of escapes, revolts, conflicts between convict and keeper, not within the secure walls of a prison, but in public places, highways and conveyances. At the best, and even if this danger be avoided, the bringing of the vilest felons from their prison cells into court and on to the witness stand, and returning them again from the witness stand to the prison cell, cannot be regarded otherwise than as a pollution of the very temples of justice.

I cannot imagine any necessity for such an extraordinary innovation. I have never known the due administration of justice to be impeded for the want of testimony from the prisons and penitentiaries. It is true that there are some persons in prison who ought not to be there, and who are not utterly vile and unworthy. In all such cases, where their testimony is absolutely necessary to prevent a failure of justice, the Governor has the power, and has uniformly exercised it, of granting a pardon with restoration to citizenship,[1] which enables the witness to appear upon the stand under more favorable circumstances than would surround him if he were brought from prison into court to be taken thence to prison again. In my judgment, the efficiency and purity of the administration of justice in our courts will be best promoted by leaving the law in these respects as it has stood for ages."

The bill was not passed over the veto.

March 22. To the Assembly: Transmitting the annual report of the trustees of the Sailors' Snug Harbor.

March 28. To the Senate:

**Veto of a bill entitled "An act to provide for extending the time for the collection of taxes in the city of Hudson."**

"This bill authorizes the common council of the city of Hudson to extend the time for the collection of the annual taxes from the 21st day of January of the present year until the first day of July next. It further provides that all interest or percentage that may have accrued on said taxes up to the said first day of July is remitted. In my judgment, this provision is both unwise and unjust. Those persons who have in good faith paid their taxes already must lose the use of their money, while under the provisions of this bill those who are dilatory are excused from the payment of interest and all percentage. The Legislature thereby puts a premium upon tardiness and substantially offers a consideration for delay in payment.

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[1] Const. 1846, art. 4, § 5.

Besides this, it seems to me a very grave question whether the remission of the interest and percentage is constitutional. The accrued interest is a debt due and owing by the taxpayer, and it is the property of the city of Hudson. It is certainly unfair for the Legislature to give this accrued interest to the delinquent taxpayers to the injury of those who have been punctual.

Again, no provision is made for the filing of further security by the treasurer, and this extension of time will probably operate to discharge his sureties.

A further objection is that this bill provides that nothing in it contained shall be construed as extending the time in which the city treasurer is required to pay to and settle with the county treasurer, a provision out of which much controversy is likely to arise, in the event that the city treasurer does not receive a sufficient amount of taxes to make the settlement with the county treasurer within the time prescribed by law.''

The bill was not passed over the veto.

April 3. To the Assembly: Transmitting a resolution adopted by the Legislature of Connecticut on the 13th of March, 1878, providing for the appointment of three commissioners to join a similar commission in New York for the purpose of ascertaining the boundary between the two States, both on the west and on the south of Connecticut, and if the commissioners from the two States could not agree on the boundary, the Governor of Connecticut was authorized to take such action as might be proper to determine the western and southern boundary of that state, either by application to the Supreme Court of the United States or otherwise. [See note 11.]

April 4. To the Assembly: Transmitting the annual report of the Brigadier General, Daniel D. Wylie, Commissary General and Chief of Ordnance.

April 12. To the Assembly:

**Veto of a bill entitled "An act in relation to the keeping open of certain public offices in the county of Westchester."**

"The Revised Statutes prescribe the days and hours on which the offices of clerks and registers in all the counties of the State shall be kept open. They expressly except all days which were then declared to be holidays, and all which should thereafter be so declared. This bill is based upon the assumption that very many of the days now observed as public holidays have not been declared such by law for any other purpose than for the presenting and protesting commercial paper. I do not think that the statutes upon this subject will bear any such construction. If they will, the proper remedy is to pass a general act which will be applicable to all the clerks' offices in the State. These offices are established, not for the benefit and convenience of the men who hold them, but for the use and convenience of all people who have business to transact with them. The rule in regard to them should be the same in all the counties of the State. If it is not so now, a general act should be passed making it so. The impropriety of making a special and separate law for each county is manifest. A few counties have already obtained such laws. If the practice be not arrested, the mischief will continue until each county in the State shall have a rule of its own, differing, probably, from that of every other county."

The bill was not passed over the veto.

April 16. To the Senate:

**Veto of a bill entitled "An act to amend sections 81 and 82 of article 4, title first of part first of chapter 16 of the Revised Statutes."**

"This bill proposes to abolish the long-established rule in regard to the proceedings on an application for the discontinuance of an old road, on the ground that it has become useless and unnecessary. The present law makes it the duty of the commissioners of highways to whom such application is made, to summon twelve disinterested freeholders of the town, to examine and certify in regard to the propriety of such discontinuance. If the twelve freeholders certify that in their opinion the road is useless and unnecessary, the commissioners of highways are thereupon obliged to decide upon the application. The present bill so changes the Revised Statutes that the commissioners are to summon at least twelve freeholders of the town, thus giving them the discretion to summon as many as they choose, and if any twelve of the number thus summoned shall certify that the road is useless and unnecessary, the commissioners must then proceed as upon the unanimous verdict by a jury of twelve under the present law. In my judgment this bill is open to two objections: First, that it directs the commissioners to proceed even though a majority of the freeholders summoned by them should find against the application; and again, that it puts the matter substantially under the control of the commissioners of highways. The old law has worked well for a long time. The change would probably tend to make the administration of such proceedings both loose and cumbersome, while beyond this, it is apparent that a highway might be condemned under the provisions of this bill, while a majority not only of the freeholders in the town, but those actually summoned on the jury, believed it to be both useful and necessary."

The bill was not passed over the veto.

April 16. To the Senate:

**Veto of a bill entitled "An act to incorporate the American Jersey Cattle Club for improving the breeding of Jersey cattle in the United States."**

" Section 1, article 8 of the Constitution contains the following provision: 'Corporations may be formed under general laws; but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the Legislature, the objects of the corporation cannot be attained under general laws.'

Chapter 776 of the Laws of 1857 provides for the incorporation of associations for improving the breed of domestic animals. I do not know of any proper object which may not be attained by the organization of this association under the general act. This being so, I suppose the Legislature to have no power to enact the present special charter under the section of the Constitution above cited."

The bill was not passed over the veto.

April 16. To the Assembly:

**Veto of a bill entitled "An act to amend section 21, article 3, title 3, chapter 6, part 1 of the Revised Statutes."**

"This bill seeks to amend the present statute regulating the appointment of inspectors of election by adding a provision that the minority inspector shall be selected from the two persons in such election district having the highest number of votes for the office 'belonging to the political party opposed on national and state political issues to the political party to which one or both of the two persons so elected belong.' It further provides that in each town one of the poll clerks shall be selected from the political party to which the two inspectors who shall be elected shall belong, and the other poll clerk shall be selected from the political party from which the inspector who shall be appointed as aforesaid shall belong.

This act seems to me far less likely to secure an impartial conducting of our elections than the present statute. The provisions of the Revised Statutes upon this subject have continued in force without amendment for very many years. It is contrary to the spirit of our general law to take account in the statutes of political situations which are subject to continual change, and are not capable of any designation sufficiently stable for statutory recognition. Frequently, within the period that the present law has been in force, there have been three, and even four, well-defined political parties differing upon national and State politics. The theory of the existing statute is that, in every locality, the responsible minority shall be represented upon the board of election inspectors. In one section of the State this minority may belong to one political faith, elsewhere to any one of the other three. The present act, however, contains an arbitrary mandate compelling the selection of inspectors from two political parties only, thus casting upon the inspectors elected the burden of deciding which is the political party opposed to them.

Again, it is conceded that the most efficient and desirable inspectors of election are those whose partisan predilections are not sufficient to ally them strongly to any political organization. Their official action is apt to be more strictly impartial than that of those who are zealous partisans. Yet the present act debars this entire class from acting as inspectors of election, and requires that all inspectors shall be partisans.

Of the provision in the bill regulating the appointment of poll clerks, it may be said that while it is open to the same objections above stated, it is out of place in that the title of the Revised Statutes amended by this bill is not the one regulating the appointment of poll-clerks, and the effect of the bill is to interject into one title of the Revised Statutes a provision which belongs to another. Moreover, the appointment of clerks is so entirely matter for the consideration of the board of inspectors, that if it be desirable that one clerk be conceded to the minority, the method of his appointment should be left to the minority inspector."

The bill was not passed over the veto.

April 23. To the Assembly:

**Veto of a bill entitled "An act in regard to the Union Free School District No. 1, in the village of Fort Edward, and to authorize the Board of Education thereof to contract with the Fort Edward Collegiate Institute for the use of certain rooms in said institute for school purposes, and for the instruction of pupils therein."**

"The bill provides that the board of education of Union Free School District No. 1, of the village of Fort Edward, may contract with the Fort Edward Collegiate institute (a private corporation) for the use by the free school of rooms to be provided in a building to be erected by the institute; the contract to be on such terms and for such a period of years as may be agreed upon by the owners of the private academy and the public school authorities. The contract is to be submitted to the inhabitants of the district entitled to vote at school meetings. If approved by them, the annual rent agreed to be paid is to be a charge upon the district, and the board of education is authorized to levy taxes for the amount, without further submission to the taxpayers, every year that the contract may run. No limit is imposed by the bill on the length of time for which the contract may be made.

The building belonging to the institute has been destroyed by fire and it is about to erect a new one. In this it is proposed to set apart rooms for the use of the public school, notwithstanding that the latter has a building of its own. My objections are these:

FIRST.—The general school law (section 19 of chapter 567 of the Laws of 1875) provides a sufficient remedy for cases of school houses becoming overcrowded. The trustees are empowered to hire rooms temporarily. There is no necessity for giving to this one district the special power to make a permanent lease, as proposed by the bill. And it is obvious that the providing of rooms, in a building yet to be erected, will not relieve any existing need of the district. If there be no such existing and instant need, then a contract for the use of rooms for many years to come, at a permanent cost to the taxpayers, is without excuse.

SECOND.—The Fort Edward Collegiate institute is a private academy, taking pupils for pay. There are obvious objections to the mingling of the pupils of our free schools with those of private schools under one roof. The two systems have antagonistic features and both will work better apart.

THIRD.—The bill is in violation of the spirit of the Constitution, which forbids the use of public moneys, obtained by taxing the people, in aid of a private undertaking.[1] It seems plain to me that the object of the bill is to secure to the collegiate institute a fixed income for a long period of years out of the taxes of the district.''

The bill was not passed over the veto.

April 29. To the Assembly:

**Veto of a bill entitled "An act providing for the appointment of an additional number of commissioners of deeds in the city of New York."**

'' There are already two thousand seven hundred and ten notaries public in the city of New York. Besides this there are three hundred commissioners of deeds, making a total of over three thousand officials in the city who are authorized to exercise the powers of the proposed new officials. I cannot see any good reason for adding to this already excessive number two hundred and fifty new and needless officers. If any change is desirable in such matters, it is in the direction of lessening the number of public officers, rather than increasing it.''

The bill was not passed over the veto.

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[1] Const. 1846, art. 8, § 10, am. 1874.

April 29. To the Assembly:

**Veto of a bill entitled "An act authorizing the courts of oyer and terminer and the courts of sessions in the county of Saratoga, to direct payment of clerk hire in certain cases."**

"This act seeks to authorize the Courts of Oyer and Terminer and the Courts of Sessions of the county of Saratoga to allow compensation to the person employed by and acting as clerk of the district attorney of that county for services rendered as such clerk at said court, not exceeding the sum of ten dollars a day, and for a period not exceeding six days at any one term of said court. It may perhaps be doubted whether the intent of this bill is to limit the compensation or gratuity mentioned to the person now acting as clerk to the district attorney, or whether it comprehends any person who may be employed in that capacity. But in either event, the enactment seems to be singularly unwise. It is no part of the province of either of the courts mentioned to remunerate the clerk of the district attorney. He is not a public officer known to the law. He is not subject to the supervision of the courts, and they have no knowledge as to the value of his services. If any such expenditure is proper, it is the duty of the board of supervisors to consider and allow it. They have abundant power, and there is no reason why, in a single county of the State, it should be taken away from them and vested in certain courts. The precedent would be pernicious, and might open the door to much mischievous legislation."

The bill was not passed over the veto.

April 29. To the Assembly:

**Veto of a bill entitled "An act requiring the highway tax of the New York Central and Hudson River Railroad Company through the town of Mentz, to be applied to the repairs of certain highways and bridges in said town."**

"The first section of this bill provides that one-half of the highway tax of the New York Central and Hudson

River Railroad Company, in the town of Mentz, Cayuga county, shall be paid annually by the commissioners of highways of said town of Mentz, to Porter P. Wethy, Hiram Burhans and the agent of said railroad company at Port Byron, and shall be expended by said Wethy and Burhans and said agent in work and repairs on the several roads and highways leading from the passenger and freight depot at Port Byron station to the village of Port Byron, and the work and repairs on certain other roads and highways named.

There are two fatal objections to this bill. The first is that it is simply an appointment by the Legislature of overseers of highways in the town of Mentz,[k] and next, that it is a plain violation of the eighteenth section of the third article of the Constitution, in that it is a local bill providing for the working of roads and bridges. Either fault is sufficient to justify its veto, and the two render it both unconstitutional and improper."

The bill was not passed over the veto.

April 29. To the Assembly:

**Veto of a bill entitled "An act to amend chapter 104 of the Laws of 1877, entitled 'An act to authorize the treasurer of Monroe County to sell property for unpaid taxes.'"**

"In the sales of lands for taxes by the State, the law requires a publication once in each week for twelve weeks. The act authorizing the county of Monroe to make sale of its own lands reduced the time from twelve weeks to six weeks. This bill proposes to further reduce it from six weeks to two weeks. This is plainly too short a time, and may cause very great injustice and wrong to the owners of real estate advertised to be sold. It is only one-third of the time required for publication of notice of sales under all judgments of the courts, and cannot be regarded as a full and fair notice to parties interested."

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[k] Const. 1846, art. 10, § 2.

The bill was not passed over the veto.

April 29. To the Assembly:

**Veto of a bill entitled "An act relating to certain indebtedness of the city of New York, and to provide for the payment and cancellation of the same."** [15]

"I have given to this bill careful study, coming to its examination with a strong prejudice in its favor. It is commended by the Mayor and Comptroller of the city of New York as a measure that will 'simplify the financial affairs of the city, prevent the future augmentation of its debt, and provide for the payment of its outstanding stocks and bonds at maturity.' My own examination of it has led me to fear that if enacted it will accomplish nothing toward these purposes beyond what will be attained if the financial affairs of the city are left to be regulated by the existing ordinances and laws.

A general objection to the whole bill is that its language is so obscure and involved that its construction will be difficult and uncertain. Trusts so enormous as those affected by this bill ought not to be subject to statutes wanting in precision.

The financial condition of the city is this, as stated in the memorial of its authorities recommending this bill. Its funded debt is $121,440,133.15. Its temporary debt payable from special assessments is $21,329,500. The revenue bonds which are issued every year in anticipation of the taxes for the year are omitted from this statement. For the payment of the assessment bonds, the moneys collected and to be collected from assessments now form a special and appropriate fund. The bill proposes that these temporary assessment bonds shall be mixed up with the funded debt and that the existing sinking fund provided for the redemption of the funded debt shall be made liable for these temporary bonds. It provides, it is true, that the moneys now in the treasury of the city, that shall be collected hereafter on account of assessments for local improvements now begun, shall be paid into the sinking fund, so that only the deficiency in the collections for these assessments will in fact be paid out of the sinking fund. This provision is not in the direction of simplicity, nor is it consistent with good faith. The sinking fund was established for and is pledged to the protection of certain long bonds. It is obvious that if these assessment bonds are made a charge upon the sinking fund, they having a shorter time to run will be paid earlier and have a preference over the bonds to which the sinking fund belongs and is pledged. Another class of bonds amounting to one million of dollars is to receive a like unfair preference, to wit, certain bonds of the towns annexed to the city from Westchester county. These, by section 4, are to be called in, redeemed and cancelled out of a sinking fund not originally pledged to them. These Westchester bonds have already been assumed by the city. There is no reason why they should not be left to get the benefit of the sinking fund in common with the rest of the funded debt in their proper turn. Moreover, while the bill professes to pay into the sinking fund the whole sum to be collected from assessments, it provides that all the assessments due from the city itself on its real estate shall be cancelled of record, thus increasing the burden unjustly imposed on the sinking fund for this class of bonds. With regard to the assessment bonds, the simple and honest course is to apply to their payment all the moneys properly pertaining to them that can be collected. When a deficiency in such collection is ascertained such deficiency of course must be assumed by the city, and will then become part of the funded debt and receive in common with other indebtedness the benefits of the sinking fund. There is not the slightest need of now mixing the accounts of the assessments with those of the funded debt, or with those of the sinking fund. It would be a breach of the city's plighted faith to do so. Any change in this respect, which is not necessary, is likely to be of injury. It will serve to conceal from public observation the deficiency likely to result in assessment collections.

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[15] This bill relating to New York city indebtedness was not passed over the veto, but another bill on the same subject was passed, and became a law, chapter 383, on the 3d of June.

Section six of the bill provides that whenever in any year the commissioners of the sinking fund, shall certify that the accumulations in the sinking fund are not sufficient to pay the stocks and bonds becoming due in the next calendar year, the city shall levy a tax towards the payment of such bonds or stocks provided that such tax shall not exceed in any one year $1,000,000. This section so far from providing for the payment and cancellation of the city debt, which the title of the bill proclaims as its object, in fact restrains the city from paying its debt as it comes due however willing it may be to do so. The reason assigned for this restriction is that it will be too burdensome on the taxpayers to exact from them each year the whole of the principal that falls due in the year. The amount of principal that falls due in the ten years including the period from 1878 to 1887, makes an average of $2,835,000 for each year. This is the average amount of principal to be paid beyond that which the sinking fund has provided for; that is to say, it is the amount of the principal debt which must be paid by taxation, or by an issue of new bonds. The difference between the share of the state tax paid by the city in 1873, and the share paid by it in the present year is almost double the average sum which the city would be obliged to raise annually if for the above period of ten years it met all the maturing principal of its debt by taxation. The debt of the city must be paid by taxation sooner or later, and the provision in this section would have been wiser if instead of restraining the city from taxing itself beyond a million in any year, it had required a tax to be levied every year of at least a million for the payment of the principal of the debt whether the sinking fund was equal to the demand for the year or not.

The sinking fund for the redemption of the city debt was established many years ago by ordinance of the common council. It is dangerous for the Legislature to meddle in any degree with its original pledges. It was established to provide for the payment of certain bonds of the city which amount in all to $21,510,043.47, not payable, some of them, until 1917. The securities in the sinking fund amount now to $31,080,007.54, that is to say, there is a nominal excess of $9,500,000, and with this excess the bill proposes to deal. Until the stocks in behalf of which the fund was created are fully paid, there is no excess, there is no sum which the common council or the Legislature can properly divert or pledge to other purposes. Until then, the accumulations must, as a matter of good faith, go on as prescribed by the original terms of the ordinance. Nor is there any necessity for now disposing of the excess which will be found in the fund, if all goes well, when its original purposes shall have been accomplished. By the ordinances of the common council the commissioners of the sinking fund are obliged to make all their investments in city stocks, so that when the sinking fund has accomplished its original purpose, whatever excess or surplus there may then be will be found invested in the various outstanding stocks of the city, a ready-made sinking fund for those stocks. By letting things alone, by leaving the sinking fund to operate under the original ordinance, the city keeps faith with the creditors to whom the fund was first pledged, and yet is constantly doing the very best thing to protect its other creditors, to wit, buying its own debts.

The most accurate calculations I have been able to make show that in 1888 the sinking fund, if let alone, will have an accumulation of over $50,000,000, after having paid $12,500,000 of principal of debt coming due in the meantime.

Again the bill authorizes the issue of new bonds to run from twenty to fifty years in exchange for all bearing interest at more than five per cent that are now a charge upon the city. It does not limit this issue to the necessities of the city arising from time to time from insufficiency of the moneys provided jointly by the sinking fund and by taxation. The probable effect of this section would be to place the greater part of the debt beyond the reach of the commissioners of the sinking fund.

Despite the fact that the bill provides for the exchange of city securities to an enormous amount it contains no provision for publicly advertising their sale or exchange or for securing competitive bids. The entire matter is left to private negotiation and the city might fail to realize any fair premiums whatever upon its new issues. Transactions of so large amount in valuable securities ought to be made on public notice and in such way as to secure for the city the most profitable disposition of its bonds.

The bill, as I have said, is obscure and ambiguous in its language. Financial statutes ought, above all other laws, to be clear and precise, leaving no room for misconstruction.

I would promptly give my assent to any bill which would secure with certainty, a simpler and better condition of the city finances and provide for the extinguishment of its debt as rapidly as is consistent with the ability of the taxpayers. An act clothed in very few words and containing a few simple provisions would suffice to these ends, and would accomplish, with certainty, all the beneficial results which are claimed to be the purposes of this bill without encountering the objections which many of its provisions suggest.

The act should provide:

1. That the city shall levy every year at least one million of dollars towards payment of the principal of its debt.

2. That whenever in any year the amount of principal which falls due is greater than the sum provided by the sinking fund and by taxation, the residue may be met by a new issue of bonds under proper restrictions.

3. That whenever the commissioners of the sinking fund hold or shall purchase any of the bonds or stocks for securing the payment of which the sinking fund was created, such bonds or stocks shall be cancelled and the interest on them shall cease.

4. That whenever bonds for new purposes shall be issued annual taxes shall thereafter be levied sufficient to pay the interest and to meet the principal within twenty years.''

May 1. To the Assembly:

**Veto of a bill entitled "An act to amend chapter 291 of the Laws of 1870, entitled 'An act for the incorporation of villages' so far as the same relates to the village of Northville in the county of Fulton."**

"The chief objection to this bill is, that it is an attempt to evade the operation of the general law by an amendment, the effect of which is limited to a single village. It is a simple evasion of the general statute and the constitutional policy of the State, and is fairly equivalent to a violation of both. Several bills, exactly similar, were passed and vetoed at the last session of the Legislature. Since the adoption of the constitutional amendments forbidding special charters to villages,[1] a number of such bills have been introduced in the Legislature, but have uniformly been defeated in the Legislature, or vetoed by the executive.

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[1] Const. 1846, art. 3, § 18, added 1874.

Besides this general objection, the matters sought to be regulated by the amendment are within the power of the board of supervisors of the county of Fulton. I know of no reason why, in the case of this single village, they should be taken from the supervisors and made the subject of a special legislative authority in the trustees.''

The bill was not passed over the veto.

May 1. To the Assembly:

**Veto of a bill entitled "An act to amend chapter 118 of the laws of 1873, entitled 'An act to provide for the construction and improvement of the road from Piseco Lake to Claflin's tannery, in the county of Hamilton."**

'' The act sought to be amended by the present bill was passed on the 22d of March, 1873, and provided that it should remain in force for five years. It therefore expired on the 22d of March last. The present bill revives it and declares that it shall remain in force for ten years. The simple effect is to re-enact the law for five years to come. Since the bill was passed, the Constitution has been amended by adding the provisions of the eighteenth section of the third article, one of which is, that the Legislature shall not pass a private or local bill laying out, opening, altering, working or discontinuing roads, highways or alleys. The present bill is clearly in conflict with this provision of the Constitution, and would be a nullity if it were approved. As to its constitutionality, it differs in no respect from an original act providing for the construction of the road in question.''

The bill was not passed over the veto.

May 1. To the Assembly:

**Veto of a bill entitled "An act to create a board of alms, and to secure the better application of funds to relieve the poor in the town of German Flats, in the county of Herkimer."**

'' This bill seeks to create a board of three persons, consisting of the supervisor of the town of German Flats and the presidents of two villages in that town, to oversee the administration of the poor laws in that town. It provides for the appointment of an overseer of the poor by the board of alms created by it, and abolishes the statutory office of overseer in that town, in effect substituting the newly created overseer for the office now provided for by the general poor law. It commits the relief of the poor to officers chosen for other purposes by part of the inhabitants of the town only. It provides that they may audit and allow their own claims for services. It authorizes them to provide labor for all persons who apply for relief, and to pay for such labor.

The first fault of the bill is, that it appoints a board of town auditors in plain violation of the Constitution.[m] Besides this defect, I cannot see any reason for the enactment of a local and special law making this one town an exception to the entire State in the system of public relief to the poor, while the most superficial reading will suggest very grave evils which are likely to result from it. It is a most evil example of special legislation. If the Legislature deem it wise to alter the provision in regard to the care of our poor, it should be done by general laws, and after the most careful study. The method proposed for this town is, so far as I can recollect, without precedent."

The bill was not passed over the veto.

May 6. To the Senate:

**Veto of a bill entitled "An act to extend the time for the sale of the Genesee Valley canal as provided in chapter 404 of the Laws of 1877, entitled 'An act to provide for the disposition and sale of certain lateral canals of this State, and the alterations, rights and other property connected therewith.'"** [16]

"Having grave doubts of the power of the Legislature to take the action contained in this bill, I referred the matter to the Attorney General for an expression of his opinion upon its constitutionality, and he has transmitted to me the following communication:

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[m] Const. 1846, art. 10, § 2.

[16] This bill was not passed over the veto. Subsequently by chapter 344, passed May 23, the act of 1877, chapter 404, providing for the disposition of

'STATE OF NEW YORK:

OFFICE OF THE ATTORNEY GENERAL,
ALBANY, *May* 2, 1878.

To His Excellency the Governor:

The bill referred by your Excellency to the Attorney General, entitled 'An act to extend the time for the sale of the Genesee Valley canal,' etc., being Senate bill 193, provides that the time of the closing and sale of the Genesee Valley canal shall be extended to the 1st of January, 1881, provided, that the same shall meet the approval of the Canal Board, and that the Canal Board shall then establish such rates of toll for that canal as will keep the same in navigable condition. The necessary construction of this act is that it shall not become a law unless approved by the Canal Board. It submits to another tribunal the propriety of enacting a law.[n] The existence of the law is made contingent upon the approval of the Canal Board This is legislation of the same character as the free school act of 1851, which was condemned by the courts as unconstitutional (Barto v. Himrod, 4 Selden, 483). The principle upon which that decision was founded has ever since been recognized and followed. The act in question must, therefore, be regarded as unconstitutional legislation, and should be disapproved for that reason.

Very respectfully,
A. SCHOONMAKER, JR.,
Attorney General.'

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the lateral canals, was amended in several particulars, including the provision fixing the time after which the Genesee Valley canal might be sold, which time was extended from the 30th of September, 1878, to the close of navigation in that year.

[n] Const. 1846, art. 3, § 1.

With the views of the Attorney General, as herein expressed, I am in full accord. I am, therefore, unable to approve the bill.''

May 6. To the Senate:

**Veto of a bill entitled "An act to authorize the county judge of Allegany County to appoint four constables in and for the town of Scio, in said county of Allegany."**

'' Section 2 of article 10 of the Constitution declares that all city, town and village officers whose election or appointment is not provided for by the constitution,' shall be elected by the electors of such cities, towns and villages, or some division thereof, or appointed by such authorities thereof as the Legislature shall designate for that purpose.' It seems clear under this provision it is not within the power of the Legislature to provide that the constables, who are town officers, should be appointed by a county judge.

Moreover the general statute passed with reference to the requirements of this very section of the constitution has designated the justices of the peace of towns as the authority to make appointment of town constables in cases where vacancies occur. I understand that the object of this bill is to provide specially for certain vacancies in office caused by the refusal of the constables recently elected in the town of Scio to serve.

In my judgment the bill is unconstitutional and improper, and for these reasons I do not feel justified in its approval.''

The bill was not passed over the veto.

May 13. To the Assembly:

**Veto of the following items in the supply bill, which became chapter 252 on the 13th of May:**

'' ' For the law library of the fourth judicial district, the sum of seven hundred and fifty dollars, to be paid on bills therefor certified by the presiding justice of said district.'

This item is objected to and not approved for the reasons stated for disapproving a similar item in the supply bill of last year, as follows: ‘ It is unequal and unjust to compel the taxpayers of the State to contribute money for the establishment of law libraries in various counties of the State. The practice has gone much too far already. It never should have been begun, and should be stopped at once and finally. * * * There is no more reason for supplying lawyers with their books than in supplying doctors and clergymen with theirs, or farmers and mechanics with their implements and tools. The convenience and advantage which the lawyers and judges will have from these libraries may easily be obtained by voluntary associations, and by contributions from those who are to be benefited by them.’*

I can see no reason for changing the views then expressed. They apply with equal force to these large appropriations for additions to law libraries, although originally written as to the foundation of one.

An additional reason for disapproving the present item is, that the appropriation is directed ‘ to be paid on bills therefor certified by the presiding justice of said district.’ There is no such officer known to the judiciary as the ‘ presiding justice ’ of a district. The presiding justice is a judicial officer of a department, not of a district; a distinction illustrated by the fact, that in the fourth judicial district, the one in question, there is no ‘ presiding justice.’

‘ For the law library of the sixth judicial district, at Delhi, Delaware county, the sum of one thousand dollars, to be paid on bills therefor, certified by the justice of said district residing at Delhi.’

This item is objected to and not approved, for the same reasons given for disapproving the last-mentioned item.

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*_Ante_, p. 82.

'For the law library of the eighth judicial district, the sum of one thousand dollars, to be paid on bills therefor, certified by the trustees of said library.'

This item is objected to and not approved, for the same reasons stated for disapproving the last mentioned item.

'For the law library of the sixth judicial district, located at Binghamton, the sum of two thousand dollars, to be paid on bills therefor, certified by Celora E. Martin, Justice of the Supreme Court, residing at Binghamton.'

This item is objected to and not approved, for the same reasons given for the disapproval of the last preceding item.

'For the law library of the seventh judicial district, at Rochester, the sum of one thousand dollars, to be paid on bills therefor, certified by the presiding justice of said district.

This item is objected to and not approved, for the same reasons given for the disapproval of the last preceding item.

'And for each of the other district law libraries of the State, the sum of five hundred dollars, to be paid on bills therefor, certified in each case by the presiding justice of such district.'

This item is objected to and not approved, for the same reason given for the disapproval of the last above mentioned item, and for the additional reason that the sum appropriated by it is not specifically stated as required by the Constitution. It does not state the number of libraries, nor the sum necessary to pay it. Section 8 of article 7 of the Constitution expressly forbids the payment of moneys from the treasury unless the law making the appropriation distinctly specifies the sum appropriated. It does not appear from this language whether the sum intended to be paid is five hundred dollars, five thousand dollars, or more.

'For printing and binding an amended edition of the New York Code of Public Instruction, to be prepared by the

Superintendent of Public Instruction, and by him distributed, one to each of the school districts of the State, the sum of twelve thousand dollars, or so much thereof as may be necessary.'

This item is objected to and not approved, for the reason that no existing law authorizes any such codification. The present bill elsewhere provides for printing, binding, and distributing an amended edition of the school laws of the State. The Code of Instruction, so called, is only ten years old; the new one will contain only the same statutes as the amended edition of the laws mentioned above and some outside notes, and the main expense of compiling it will lie in the annotations, and not in the laws. Even if it were desirable to publish such a code, it would seem wiser to do it at some future time, and not in the same year when a newly revised edition of the general school laws is to be distributed. The distribution of the amended laws will put in the hands of all district authorities the statutes of public instruction as they exist at present. Five or ten years hence, when these statutes may have been amended, it will be far less unnecessary to issue a code.

More than all this, I am informed by the superintendent, that the amount appropriated is not sufficient to accomplish the work specified. It does not seem proper, in these times, to inaugurate the publication of a volume which is to cost an indefinite sum, and which may become a needless and heavy burden on the treasury, nor in any event should it be inaugurated in an appropriation bill without previous legislative authority.

' For repairing the highway upon the Cattaraugus Indian reservation, running from Gowanda through said reservation into the town of Perrysburgh, in Cattaraugus county, changing the line thereof, and for the erection and repair of bridges thereon, the sum of two thousand dollars to be expended under the supervision of Millen T. Hill, Enoch Taylor, second, and William F. Vosburgh, of Gowanda, aforesaid, who are hereby appointed commissioners for that purpose, who shall each receive out of said sum two dollars per day for each full day occupied by them in and about the repairing of said road, but the total compensation of such commissioners shall not exceed the sum of one hundred and fifty dollars, and no part of the sum hereby appropriated shall be paid over to said commissioners until they shall have executed a bond to the people of this State, to be approved by the Comptroller, conditioned that they will faithfully discharge their duties as such commissioners and truly account under oath to the Comptroller for all moneys received by them for the purpose aforesaid, and no part of said sum shall be expended except upon a plan and estimate of said work, which will complete it within the sum above appropriated.'

This item is objected to and not approved for the reason that the Legislature has been forbidden by section 18 of article 3 of the Constitution, to pass any private or local bill, for laying out, altering, working or discontinuing roads, highways and alleys. More than this, chapter 482 of the Laws of 1875, gives full power to the supervisors in the matter of this road if needed.

A similar item in the supply bill of last year was disapproved for like reasons. The prohibition of the Constitution is positive, and no exception is made to it, and it applies as much to Indian lands as any other. The State is not the owner of these lands any more than the counties within which they lie. If the State has any authority at all to build roads and bridges through the Indian reservations, it has conferred all the authority it has upon the counties, but neither State nor county has any right to enter upon these reservations, for any purpose, without the consent of the Indians themselves. If the Indians want the roads they can build them. If white men only want them, they can build them for themselves as in all other cases, provided they obtain the consent of the Indians.

'For repairing the road across the Onondaga Indian reservation, leading from what is known as the "Castle Hotel," in the town of Onondaga, to a point intersecting the road leading by the house of Edwin Clark, a distance of about one and one-eighth miles, the sum of about five hundred dollars, to be expended under the supervision of John Kelley, of said town, who is hereby appointed a commissioner for that purpose, who shall receive out of said sum three dollars per day for each full day occupied by him in the discharge of such duty, but for not exceeding ten days in the aggregate, and who shall execute to the people of this State a bond, to be approved by the Comptroller, for the faithful discharge of his duties as such commissioner.'

This item was contained in the supply bill of last year in precisely the same language, and was then, and is now, objected to and not approved for the same reasons given for disapproving the last mentioned item.*

'For the clerk of the Assembly, for preparing the appendix to the Clerk's Manual, pursuant to the resolution of the Assembly, adopted May 24, 1877, three hundred dollars.'

This item is objected to and not approved. The Constitution and the statutes alike forbid this appropriation. Under the nominal excuse of extra services prior to 1874, large amounts were annually voted to the clerks and employes of the Senate and Assembly. By an amendment to the Constitution, adopted in November of that year, the Legislature was forbidden to grant any extra compensation to any public officer, servant, agent or contractor.°

Chapter 112 of the Laws of 1875, provides for the compensation of the clerks of the Senate and Assembly a salary of $3,500 each. Further allowances by that statute bring the compensation of the Clerk of the Assembly up to $5,250. The statute then declares that 'no extra allowance shall be made to the officers and employes above named on any pretence whatever.' The appropriation for the payment of the regular compensation has already been made in the general appropriation bill. The statute of 1875 passed immediately after the amendment to the Constitution took effect, evidently shows the construction put upon the amendment by the Legislature. That construction is clearly right since under the pretence of extra services any amount may be allowed and the constitutional prohibition utterly nullified. The intent of the Constitution was to destroy the whole system of extra allowances and the appropriations in the present bill are in open violation of that intent. Any reason that may be given for voting away thousands of dollars to an officer who receives five or six thousand dollars for six months work may be as well urged for extra compensation to other and less richly salaried officers.

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**Ante*, p. 92.

° Const. 1846, art. 3, § 24.

' For preparing and classifying under appropriate headings for the use of the Legislature, an index to papers on file in the Assembly from eighteen hundred and seventy-three to eighteen hundred and seventy-seven, both inclusive, pursuant to resolution of the Assembly adopted May twenty-fourth, eighteen hundred and seventy-seven, seven hundred and fifty dollars.'

This item is objected to and not approved, for the same reason given for the disapproval of the last mentioned item.

'And for preparing, under appropriate headings, a complete index to the laws of the State from eighteen hundred and seventy-five to eighteen hundred and seventy-seven, both inclusive, pursuant to resolution of the Assembly, adopted May 24th, eighteen hundred and seventy-seven, one thousand dollars.'

This item is objected to and not approved, for the same reason given for the disapproval of the last mentioned item; and for the further reason that even if it were in the power of the Legislature to pay it, it seems an exorbitant allowance. The Secretary of State is obliged by statute to make a complete official index to the Laws of the State each year. To combine these indices for three years into one is a very short and simple task, and would be richly compensated by an allowance of one hundred dollars.

'For the journal clerk of the Assembly, for preparing and classifying under appropriate headings, under the direction and supervision of the Clerk of the Assembly, a complete index to bills introduced in the Assembly and not printed, from eighteen hundred and seventy-three to eighteen hundred and seventy-seven, both inclusive, pursuant to resolution of the Assembly, adopted May twenty-fourth, eighteen hundred and seventy-seven, six hundred and seventy-five dollars.'

This item, which is simply a duplicate of one of $750 to the Clerk for the same services mentioned above, is objected to and not approved, for the same reasons given for the disapproval of that item.

'And for preparing and classifying under appropriate headings, under the direction and supervision of the Clerk of the Assembly, a complete index to all bills printed during the years eighteen hundred and seventy to eighteen hundred and seventy-seven, both inclusive, pursuant to resolution of the Assembly, adopted May twenty-fourth, eighteen hundred and seventy-seven, one thousand two hundred and fifty dollars.'

This item is objected to and not approved, for the same reasons given for the disapproval of the last mentioned item.

'For Henry A. Glidden, late Clerk of the Senate, for preparing a continuation of the general index of documents of the Senate and Assembly, from eighteen hundred and seventy to eighteen hundred and seventy-eight, and distributing the same, pursuant to resolution of the Senate, adopted May twenty-fourth, eighteen hundred and seventy-seven, the sum of twelve hundred dollars.'

This item is objected to and not approved, for the same reason given for the disapproval of the last mentioned item.

'And for preparing an index to the journal and testimony taken before the Senate on the trial of the charges against De Witt C. Ellis, and distributing the same, pursuant to a resolution of the Senate, adopted August seventeenth, eighteen hundred and seventy-seven, the sum of five hundred dollars.'

This item is objected to and not approved, for the same reason given for the disapproval of the last mentioned item.

'For the Clerk of the Senate for preparing an index to the journal and proceedings of the Senate, in the trial of the charges against John F. Smyth, Superintendent of the Insurance Department, and distributing the same pursuant to resolution of the Senate, adopted March twenty-fourth, eighteen hundred and seventy-eight, the sum of five hundred dollars.'

This item is objected to and not approved, for the same reason given for the disapproval of the last mentioned item, and for the further reason that chapter 112 of the Laws of 1875, above cited, provides that there shall be paid annually to the Clerk of the Senate $500, and to the Clerk of the Assembly $750, for indexing the journals, bills, and documents of the Senate and Assembly. Under this statute, I suppose it was the duty of the Clerk to prepare the index named in the appropriation without any extra compensation whatever, and in that view of the case this item is even more improper than those above alluded to.

'For the county of Cayuga as an equitable reimbursement for certain expenses incurred and paid for the two trials in eighteen hundred and seventy-three and eighteen hundred and seventy-four, and the appeals thereon of Michael Donohue, a convict, indicted for the murder of a convict in Auburn prison, including all disbursements made necessary during the incarceration of said Donohue, prior to, pending, and subsequent to the trials; for like expenses incurred and paid for the trials, in eighteen hundred and seventy-four, of John Coughlin, Patrick Egan, Thomas E. Hardy, and Patrick Clifford, convicts, indicted for assault with a deadly weapon upon a keeper in said prison, including like disbursements; for like expenses incurred and paid for the trial in eighteen hundred and seventy-five, of Edwin Thomas, a convict, indicted for the murder of a convict in said prison, including like disbursements; for like expenses incurred and paid for the trial in eighteen hundred and seventy-seven, of Harvey Thorpe, a convict, indicted for the murder of a convict in said prison, including like disbursements; and for like expenses incurred and paid for the trial, in eighteen hundred and seventy-seven, of William Barr, a convict, indicted for the murder of a keeper in said prison, including like disbursements, the sum of seven thousand and eleven dollars and forty-five cents.' [17]

This item is objected to and not approved, for the reason that it is, in every proper sense, a private claim, consisting of very many separate items, and, under the Constitution, is subject to the audit and allowance of the Board of Audit, before the Legislature has power to appropriate money for its payment.[p] This objection alone is fatal to the item without considering the question whether such an appropriation ought ever to be made to counties to defray the expenses of trials for crimes committed within their borders. The same item was contained in the supply bill of last year, except that it did not provide for the expenses of the trials of Thorpe and Barr. The reasons just stated were then given for its disapproval, but the item has not yet been submitted to the Board of Audit. Were this item approved, the Comptroller would have no power to pay it, since it has not been audited as required by the Constitution.

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[17] See 1877 veto message of May 16, which included a similar item in the supply bill making an appropriation for expenses incurred by Cayuga county in the trial of certain persons for offenses committed while confined in Auburn prison. See also 1877, note 21, *ante*, p. 87.

[p] Const. 1846, art. 3, § 19, added 1874.

The item of this year differs from that of last only in that it is now called an 'equitable reimbursement.' This does not avoid the necessity of submitting the claim to the Board of Audit, since, by the statute establishing that board, it is to hear the testimony and to consider what amount should 'equitably be paid by the State to the claimants.'

'For the city of Syracuse, as an equitable reimbursement and voluntary payment of the local assessment and expenses of paving on Salina street, in said city, in front of the Salt Springs office, in eighteen hundred and seventy-six, three hundred and eighty-two dollars and seventy-two cents; of the local assessment and expenses of constructing a sewer in Leavenworth avenue and Clark street, in said city, in front of lands belonging to the State, in eighteen hundred and seventy-seven, two thousand four hundred and seventy-nine dollars and seven cents.'

This item is objected to, and not approved. In objecting to a similar item last year, I used the following language: 'On principle the State ought not to be compelled to pay to its municipal corporations assessments for local improvements within their limits. The property of the State is ordinarily of much more benefit to the particular locality in which it lies than to the State itself, and to sanction the principle that the cities and villages of the State may, in their discretion, assess State property for local improvements, is to open the door for unlimited calls and drafts on the treasury for moneys to be expended at the discretion of such local authorities. Such assessment and taxation upon State property is beyond the jurisdiction of such municipalities. Their power is derived from the State itself, and it is not to be admitted that they can impose liabilities on the superior power which created them. In cases where it may be proper for the State to contribute to such expenses, the Commissioners of the Land Office should investigate the matter, and the State should voluntarily pay such proportion as it may deem just and equitable.'*

I am still of the opinion then expressed, and cannot, therefore, assent to this appropriation.

'For the city of Utica, for the local assessment and expense of grading Canal street from the old city line to the Whitesboro road, five hundred and fifty-six dollars and twelve cents.'

This item is objected to and not approved for the reasons last above stated, and for the additional reason that the assessment in question is of an unprecedented character, the State property upon which it is levied being the Erie canal. To levy assessments against the State upon this highway of commerce is wholly inadmissible under any circumstances. To commence such a practice at a period when it is claimed that the taxpayers of the State should take upon themselves the payment of all the expenses of maintaining the canals, is intolerable.

'For the Blind Asylum, at Batavia, for securing a supply of water for fire and other purposes, for the purchase of apparatus for giving instruction to the blind, for repairing rooms, for building additional work-room, and for additional bedding, ten thousand dollars.'

This item is objected to and not approved, for the reason that I learn, from official sources and from persons immediately connected with the management of the institution, that there is no immediate necessity for the expenditure provided for by this appropriation, and that no injury or serious inconvenience will be caused by its omission.

'For finishing the basement and first stories of the State

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* *Ante*, p. 86.

Inebriate Asylum, at Binghamton, the sum of seven thousand five hundred and thirty-four dollars and thirty cents.'

This item is objected to and not approved for the reason that the basement and first stories of the building have been found sufficient for all the purposes for which they are required ever since the building was brought into use. The proofs of its benefit to the public, thus far, have not been such as to encourage a further expenditure for construction.

'For John Flanagan, as defendant in the action hereinafter named, the sum of six hundred and sixty-four dollars and sixty-six cents, being the amount in full payment of the principal of two judgments for costs against the people of this State in the action commenced by the late Attorney General against John Flanagan, which judgments were docketed in the clerk's office of the county of New York, the one on the eighth day of March, eighteen hundred and seventy-five, and the other (affirming the first judgment) on the eighth day of November, eighteen hundred and seventy-seven.'

This item is objected to and not approved, for the reason that another provision of this bill appropriates four hundred and eighty-one dollars to John B. Haskin, on account of the same judgment. An affidavit presented to me shows that the four hundred and eighty-one dollars was allowed to John B. Haskin by the Board of Audit for this same judgment. This being so, the present appropriation to Flanagan is simply a second payment by the State of the same claim, and for a private claim which has never been allowed by the Board of Audit.*

'For John Flanagan * * * and the further sum of ninety dollars and eighty-two cents for interest on said judgments.'

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* Const. 1846, art. 3, § 19.

This item is objected to and not approved for the same reason for disapproving the previous item.

'For the payment of a canal certificate, with interest thereon, given by the late Canal Commissioner in charge of the middle division of the canals, to C. L. McAlpine in eighteen hundred and seventy-two, addressed to the Auditor of the Canal Department, for extraordinary expenses incurred in the discharge of his duties as a resident engineer, the sum of eight hundred and twenty dollars.'

This item is objected to and not approved, for the reason that I learn from the records of the Canal Board and the Canal Department, that its payment has been repeatedly refused by different Auditors of the Canal Department and by the Canal Board, and the Canal Board has once, at least, held that the claim should be properly presented to the Board of Audit. This having been the repeated decision of the canal authorities, it does not seem that the Legislature should reverse it.

'For Weed, Parsons & Co., * * * for printing, expressage and postage for the Commissioners to Revise the Statutes, payable on the certificate of the chairman of the Commissioners, as the work progresses, five thousand dollars.'

This item is objected to and not approved. The total expense of this Commission to the State cannot fall beneath $200,000, and may go beyond it. For this vast expenditure the State has received, in my judgment, no benefit and much harm. The Commission ceased to exist on the first of the present month. There is no such officer in existence as the chairman of the Commissioners, so that there could be no official certificate on which the appropriation could be paid, if it were approved. Neither is it proper to provide for paying printing, expressage and postage 'as the work progresses,' since no provision has been made for the progress of the work.

### PAYABLE FROM THE ORDINARY CANAL REPAIR FUND.

'For the construction of a foot bridge over the Erie canal, on Kohler street, in the village of Tonawanda, the sum of five hundred dollars, or so much thereof as may be necessary.'

This item is objected to, and not approved. I learn, upon inquiry in the Canal Department, that there is no money in the treasury which can safely be applied to building bridges. The whole amount appropriated for ordinary repairs for the current fiscal year, was $640,000. Of this amount $263,067.66 were expended by the Canal Commissioners during the first four months before the Superintendent of Public Works came into office, most of it having been expended during the last two months of navigation. This left for the Superintendent only the meagre sum of $376,932.34 with which to open the canals, to manage and operate them during eight months, up to the first of October next. It is evident that only by the closest economy and the avoidance of every expenditure which can possibly be dispensed with can he hope to do this. If any appropriations of this character were proper at all, they should have been placed in the bill making appropriations for ordinary repairs.

'For the construction of a draw in the bridge over the navigable channel of the Oneida river, at Brewerton, between the counties of Oswego and Onondaga, the sum of seven thousand five hundred dollars.'

This item is objected to, and not approved, for the same reasons given for disapproving the last mentioned item.

'For the construction of a lift bridge over the Oswego canal, in the city of Syracuse, on Salina street, at its intersection with Bridge street, in place of the bridge now over said canal at that point, which was authorized by chapter three hundred and eighty-two of the Laws of eighteen hundred and seventy-four, the sum of twelve thousand dollars, or so much thereof as may be necessary.'

This item is objected to, and not approved, for the reasons given for disapproving the last mentioned item.

'For repairing the stop-gate in the Genesee river feeder at Rochester, and for draining and putting in sanitary condition said feeder, the sum of one thousand four hundred dollars, to be expended under the direction of the State Engineer and Surveyor.'

This item is objected to, and not approved, for the reasons given for disapproving the last mentioned item.

'For the construction of a suitable bridge over the Erie canal, in the village of Tonawanda, connecting Delaware street in Erie county with Main street in Niagara county, the sum of twelve thousand dollars; said bridge to be built of such materials and in such manner as the State Engineer and Surveyor shall direct; provided, however, that before said bridge shall be constructed, or any portion of this appropriation shall be expended, the village of Tonawanda and the owners of lands taken for or adjoining the site for said bridge shall indemnify and release the State from all and every claim for damages or compensation for land taken, or for other damages, and provided further that said village shall have first, at its own cost, constructed the necessary abutments and approaches for such bridge.'

This item is objected to, and not approved, for the reasons given for disapproving the last mentioned item."

May 13. To the Assembly:

**Veto of a bill entitled "An act to incorporate the Tornado Hook and Ladder Company, No. 1 of the Village of Union, Broome County, New York."**

"This class of corporations may be organized under the general statutes of the State. Its creation by special act is, therefore, not within the power of the Legislature under the provisions of section 1 of article 8 of the Constitution."

The bill was not passed over the veto.

May 13. To the Assembly:

**Veto of a bill entitled "An act to extend the jail limits of Orange county."**

"Chapter 482 of the Laws of 1875, makes full and complete provision for cases of this sort. It is manifestly improper that the Legislature should interfere and by special act to do what is most carefully provided for by the general statute."

The bill was not passed over the veto.

May 13. To the Assembly:

**Veto of a bill entitled "An act for the protection of fish in Esopus creek and its tributaries in the county of Ulster."**

"Chapter 482 of the Laws of 1875 has conferred upon boards of supervisors the power to protect and preserve, subject to the Laws of this State, fish and shellfish in all waters of the county. The intention of the statute is to delegate these matters to the local authorities, and there they should remain. Bills of this character have been uniformly disapproved where the supervisors had clearly the power to act in the premises."

The bill was not passed over the veto.

May 13. To the Assembly:

**Veto of a bill entitled "An act in relation to canals."**

"The people of this State, having paid over thirty millions of dollars by direct taxation for the benefit of the canals, and finding their revenues diminishing and their expenses increasing, determined to make a complete change of canal administration and management. For this purpose they adopted in 1876, by a majority of over four hundred and fifty thousand, an amendment to the Constitution placing the whole power and responsibility of the management in the hands of one executive head, denominated the Superintendent of Public Works.[q] It is a most important experiment, and it is not too much to say that upon its success depends the prosperity, if not the very existence, of the canals. Every officer of the government, every member of the Legislature, and every citizen of the State, should make all reasonable efforts to aid the Superintendent in producing the most favorable results.

After many delays and embarrassments, a superintendent was appointed, and entered upon his duties about three months ago. On the 15th of April, some two or three weeks earlier than usual, the principal canals were opened, and are now in full and successful operation, encouraging the hope of a largely increased business, and a material reduction in expenses, results which will be hailed with the highest satisfaction by all sincere friends of the canals and of the commercial prosperity of the State and city of New York.

At this trying crisis in the fate of the canals, the present bill is presented to me for approval, and it becomes my duty to examine it with reference to the effect which it may produce in securing or preventing the success of the trial in which we are engaged. I regret to find that it appears throughout to contain provisions none of which are likely to effect any good, and many of which cannot fail to embarrass seriously the Superintendent, and to retard all his efforts to produce the expected results. It seems to be, to a large extent, a reversal of the will of the people as expressed in the amendment to the Constitution. Many of its provisions are in direct conflict with that instrument. All of them appear to be in a spirit of hostility to it, as exemplified in the following brief statement:

First. The Constitution expressly charges the Superintendent with the 'execution of all laws relating to the repair and navigation of the canals.' This explicit provision necessarily carries with it the power to purchase materials and pay for them, to employ laborers and pay their wages, and certainly includes canal appropriation laws. The powers thus given by the Constitution are all taken away by this bill, and placed in the hands of paymasters, officers never before known in the administration of the canals, even when the expenses were at least eight times larger than they are expected to be under the Superintendent.

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[q] Const. 1846, art. 5, § 3, am. 1876.

Second. The power to appoint all persons employed in the care and management of the canals except collectors of tolls, and that in the department of the State Engineer and Surveyor, is expressly given in the Constitution to the Superintendent. The bill takes away this power, and provides for the appointment of three paymasters by the Commissioners of the Canal Fund. If they may be authorized to appoint three, so they may be to appoint three hundred or any larger number, and also purchasing agents, employing agents, inspectors, and so on until the Superintendent is shorn of every vestige of power which the Constitution has given him, and the canals involved in worse profligacy and ruin than that from which they have recently been rescued. It is worthy of note that in this section the bill overturns a provision of law which has existed ever since the institution of the Commissioners of the Canal Fund, requiring that at all their meetings the presence of the Comptroller should be necessary to make the quorum. This act dispenses with that requirement without, in form, repealing or amending it.

Third. The Constitution requires that the Superintendent and his assistants shall give security in such amounts as the Legislature shall require, and the Legislature, in view of the fact that all payments are to be made through the Superintendent and his assistants, fixed the security to be given by them at very large amounts, to wit, $50,000 for the Superintendent and $20,000 for each assistant. That security has been given, amounting in all to $110,000.

This act fixes no amount of security to be given by the paymasters, but leaves it to the Commissioners of the Canal Fund, who are to make the appointments, to fix the security at any sum which they may choose. A merely nominal sum would meet all the requirements of the bill. Still worse, it provides that in case of the disability of a paymaster the commissioners of the Canal Fund may appoint a person to discharge his duties temporarily. It contains no provision for requiring any security whatever from such temporary appointees, and defalcations by such substitutes might occur, for which the State would have no chance of reimbursement.

Fourth. The services of paymasters, if appointed, would be useless, embarrassing to the Superintendent, and a needless additional expense at a time when he is under the most absolute necessity of reducing his expenses to the lowest possible dollar. The whole amount appropriated for ordinary repairs for the current fiscal year, commencing October 1, 1877, was $640,000. Of this sum the Canal Commissioners had expended $263,067.66 before the Superintendent was appointed, leaving to him only the small sum of $376,932.34 with which to pay all the expense of opening the canals and keeping them in running order until the first of October next.

Fifth. The Constitution leaves it entirely optional with the Superintendent to appoint one or two, or three assistants, as he may deem proper. The bill, in direct violation of this provision, declares that he shall appoint three.

Sixth. The whole scope and spirit of the amendment puts it in the power of the Superintendent to make such divisions upon the canals as he may find most needful and convenient for their efficient and economical management. The bill provides that he shall divide the canals into three divisions, and that one of the proposed paymasters and one assistant superintendent shall be assigned to each division.

Seventh. The bill after making elaborate provisions of a character never before heard of in this State, forbidding the appointment or discharge of any person for political reasons, further prescribes that 'Any three citizens of the neighborhood where such violation occurred who are cognizant of the same, may make complaint thereof on oath before a justice of the Supreme Court having jurisdiction in the county where such violation is alleged to have occurred, whose duty it shall be forthwith to summon before him such official against whom such charges have been made, to hear such charges, answer and determine the truth thereof.' The justice is to hear the proofs and give a certificate which may be presented to the Governor, and the Governor may remove the Superintendent. It is not likely that any justice of the Supreme Court could be found who would assume such a jurisdiction, and set up such an inquisition as is here provided. It is entirely foreign to all the powers given to the judiciary, or to the justices of that court by the Constitution.[r] It is neither an action, nor a proceeding in law or equity, and the justice can neither give a judgment nor make an order in the matter. It is an empty extra-judicial proceeding altogether. The certificate which the justice is authorized to give is not of any fact, nor of any adjudication. It is simply the expression of opinion on the part of the justice as to what was the secret motive acting upon the mind of the Superintendent in making an appointment or a removal in the discharge of his duty. The presentation of it to the Governor, and the conferring upon him by this act of the power of removal, may be regarded as superfluous. The Constitution itself gives to him that power without the interposition of any justice, or any complainants, or any legislative act, if he chooses to exercise it; and he is fully clothed with the power to investigate every abuse, every act of mal-administration, and to make the removal whenever it appears proper to him.

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[r] Const. 1846, art. 6, § 6, am. 1869.

Eighth. The complaint by three citizens may be made by any three disappointed applicants for places, or by any three discharged workmen, and it may be made to any justice having jurisdiction in the county, who is forthwith to summon the Superintendent before him to hear such complaints and answers. Every Justice of the Supreme Court has jurisdiction in every county of the State. And this action can be taken by the remotest justice in the State. The Superintendent may thus be summoned forthwith from Buffalo to Brooklyn, and before he is through with the hearing there, he may be summoned by another three complainants before a justice in St. Lawrence or Chautauqua counties on these errands which, as has been seen above, are to end in nothing, but which produce the annoyance and embarrassment of taking away forthwith at any time the Superintendent from the most important duties of his important position. It seems difficult to imagine any provision which could be more annoying to the Superintendent, more embarrassing to his action, more certain to bring disaster upon the experiment from which the people are hoping so much.

Ninth. Under the express and comprehensive prescription of the Constitution, the canals have been put in order and opened. A very considerable business has already been transacted and is upon the books of the department. Men are employed and plans matured. This act, if approved, is to take effect immediately, and will involve an entire change in the method of bookkeeping and the accounts of the Canal Department. Confusion and uncertainty will be the inevitable result. Besides this, the bill forces upon the Superintendent the disadvantage of the credit system instead of cash payments for tolls and materials, and thus two formidable difficulties are added to a situation already sufficiently involved.

Want of time prevents me from going into the details of many other objectionable features of the bill. From first to last its effect is to overthrow almost every provision of the amendment of the Constitution, to take away from the Superintendent all the powers which that amendment gives him, to leave him constantly at the mercy of disappointed applicants for places or discharged employes, to tie up his hands and embarrass his action in every direction so as to prevent the possibility of his making the new system of administration a success. Its violation of the letter and of the whole tone and spirit of the Constitution are so apparent that the law would doubtless be held to be a nullity, if it were approved.

The new system might be aided to some extent by judicious legislation, but such legislation is not indispensable, as the Constitution gives ample powers in itself for the care and management of the canals, and it seems unwise to interfere with it whilst it is going on with every promise of success, before it has had a fair trial, through at least one season of navigation."

The bill was not passed over the veto.

May 15. To the Senate:

**Veto of a bill entitled "An act to incorporate the Grand Council of Royal Templars of Temperance of the State of New York."**

"From the provisions of the first and second sections of this act it seems clear that the corporation sought to be created by it falls within the class known to our general statutes as charitable and benevolent. For the organization of these institutions the general law makes abundant provision. The object of the proposed society may be fully attained under the general act. If this assumption is correct, the Legislature has no constitutional power to pass a special act of incorporation under the proscription of section first of article eighth."

The bill was not passed over the veto.

May 15. To the Senate:

**Veto of a bill entitled "An act to incorporate the Auburn City Hospital."**

"Section first of article eighth of the Constitution is as follows: 'Corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes and in cases where, in the judgment of the Legislature, the objects of the corporation cannot be attained under general laws.' Ample provision has been made by the Legislature for the organization of charitable and benevolent corporations. I suppose the association proposed to be created by this bill could as well be organized under the general law. Its creation by special act is therefore unconstitutional."

The bill was not passed over the veto.

May 15. The Legislature adjourned without day.

## MEMORANDUMS FILED WITH BILLS BEFORE THE ADJOURNMENT OF THE LEGISLATURE.

April 30.

**Memorandum filed with a bill, chapter 203, entitled "An act to provide for the incorporation of pipe line companies," which became a law without the approval of the Governor.**

"I am unable to approve the act entitled 'An act to provide for the incorporation of Pipe Line Companies,' for the reason that I am of opinion that the power which it gives to the corporations which may be formed under it, to take private property without the consent of the owner, is unconstitutional.[8] Upon this question I applied to the Attorney General for an official opinion, which he has kindly given to me, and it is hereto annexed. From this opinion, as well as from my own examination, I find the judicial decisions upon the question in some conflict and confusion. Some of them go so far as to practically destroy the old doctrines in regard to the right of eminent domain. The question is a judicial one, and I regard it of great public importance that it should be authoritatively settled at the earliest practicable day by a decision of the highest court in the State. For this reason, and for the purpose of enabling the matter to be brought before the courts for such adjudication, I cheerfully adopt the suggestion of the Attorney General, and allow the bill to become a law by the lapse of the ten days provided for in the Constitution."[t]

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[8] Const. 1846, art. 1, § 6.

"STATE OF NEW YORK:

OFFICE OF THE ATTORNEY GENERAL,
ALBANY, *April* 29, 1878.

To his Excellency the Governor:

The bill to authorize the formation of pipe line companies, containing a delegation to such companies of the right of eminent domain, upon which your Excellency has requested the opinion of the Attorney General, presents one of the gravest questions of legislation, as well as of judicial inquiry.

The power of eminent domain is inherent in the State, as the sovereign, and rests upon necessity. It does not exist by virtue of any constitutional provision. By the universal consent of mankind it appertains to all governments as essential to their existence and perpetuity, and to secure the beneficial objects of government. Implied consent is given to the exercise of this power by every person who becomes a subject or a citizen under a government, and the tenure of property protected by government is burdened with the liability to be appropriated when deemed necessary by the sovereign authority. This power is recognized by the Constitution, and the only provision respecting it is a restriction upon its exercise, requiring compensation to be made when private property shall be taken.[u]

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[t] Const. 1846, art. 4, § 9, am. 1874.

But this great power, one of the highest attributes of sovereignty, like the taxing power, can only be exercised for a public purpose. The Constitution, which requires compensation to be made when private property is taken for a public use, implies that under universally understood principles of government, the power can only be exercised for a public use. No consent is implied that under this power private property may be taken for a private use, for the plain reason that it would be destructive of the very object of government, which is to protect rights of person and rights of property. It is a fundamental principle that governments derive their just power from the consent of the governed; and implied consent embraces only the power necessary for the public purpose of just government. A public use is therefore the only purpose for which private rights of property can be invaded and the owner displaced by the sovereign power. This is a limitation on the power of governments indispensable to the security and happiness of the people. A public use, in the proper sense, is a governmental use. It is some purpose relating to the public defense, the public welfare, the administration of government, the means of communication with all parts of the territory governed, and facilities for collecting and augmenting the public revenue and for commercial intercourse. For these purposes lands may be taken for the erection of buildings for legislative bodies, for courts, for prisons, for all police and sanitary purposes, for educational uses and for public charities, as well as for building bridges, roads, canals and parks.

'But the right of eminent domain does not, however, imply a right in the sovereign power to take the property of one citizen and transfer it to another, even for a full compensation, when the public interest will be in no way promoted by such transfer.' (3 Paige, 73.[v]) 'A public use implies a possession, occupation and enjoyment of the land by the public at large, or by public agencies; and a due protection to the rights of private property will preclude the government from seizing it in the hands of the owner and turning it over to another on vague grounds of public benefit to spring from the more profitable use to which the latter may devote it.' (Cooley, Const. Lim. 531.)

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[u] Const. 1846, art. 1, § 6.

And the delegation of this power to corporations or to individuals can only be made for the same purposes for which it can be exercised by the State. It can only be delegated for a public use, according to the just import of that term as declared by the courts. Questions of more serious difficulty have arisen from the delegation of this power than from its exercise directly by the State. The law has been strained to sustain delegations of the power, when the use was not public in its true sense, but primarily for private advantage, and useful or beneficial to the public in their private affairs.

Exaggerated importance has been ascribed to meritorious private enterprises, and legislative bodies and courts have yielded to plausible importunities for the delegation of this power for purposes which cannot be justified upon sound principles. To sustain such grants, resort has been had as Justice Cooley observes, to ' the guise of a convenient fiction, which treats a corporation managing its own affairs for its own benefit, as a public convenience and agency.' The theory of benefit to the public, under modern legislative and judicial action, has been made to supplement the more guarded and safer condition of use by the public. The exercise of this right by railroad corporations, rests on this fiction and theory of benefit to the public, and was a departure from the principles of the common law, but presented considerations so entirely new and important as apparently to justify the departure, and is now within the settled policy of the law.

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[v] Beekman v. Saratoga & S. R. Co.

What constitutes a public use is properly a judicial question to be determined ultimately by the courts, although in some States it has been held that where a statute in terms declares the use to be public for which private property is authorized to be taken, the courts will hold it to be such, unless the contrary clearly appears (25 Ill., 540; 33 Conn., 55[w]), and the United States Supreme Court has given sanction to the same doctrine. (4 Otto, 113; ditto, 310.[x]) But in this State the law is settled that a legislative declaration cannot make that a public use which is not so in its nature. (39 N. Y., 174; 66 N. Y., 569.[y]) The latter case is the latest and most authoritative enunciation of the law upon this question. The court say that 'where the uses are in fact public, the necessity or expediency of taking private property for such uses, by the exercise or the delegation of the right of eminent domain, the instrumentalities to be used and the extent to which such rights shall be exercised or delegated, are questions to be determined by the Legislature and not by the courts. 'Whether the use is in its nature public or private is the question upon which the right of the Legislature to interfere with private property depends. That question *can only be determined by judicial inquiry;* and all the cases in which the action of the Legislature condemning or authorizing the condemnation of private property has been sustained, are founded upon the concession or adjudication that the use for which the property is taken is, in its nature, public.' (66 N. Y., 572.) And in that case the court decided that the delegation of the right of eminent domain to rural cemetery associations incorporated under the general laws of this State is for a private and not a public purpose, and therefore unconstitutional and void.

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[w] Joy v. Berdell, 25 Ill. 540; Goodsell v. Hartford & N. H. R. Co., 33 Conn. 55.

[x] Munn v. Illinois, 4 Otto, 113; Burlington v. Beasley, 4 Otto, 310.

[y] Deansville Cemetery Asso. (1876), 66 N. Y. 569; Re Townsend (1868), 39 N. Y. 171.

We find ourselves somewhat at sea, however (as Judge Cooley remarks), when we undertake to define in the light of the judicial decisions what constitutes a public use. (Const. Lim., 531.) But accepting (as the same learned jurist says) as correct the decisions which have been made, it must be conceded that the term ' public use ' as employed in the law of eminent domain, has a meaning much controlled by the necessity, and somewhat different from that which it means generally. (Const. Lim., 536.)

And in expanding this view more fully elsewhere in an elaborate opinion he says: ' Every branch of needed public industry has a right to exist and community has a right to demand that it be permitted to exist; and if for that purpose a peculiar locality already in possession of an individual is essential, the owner's right to undisturbed occupancy must yield to the superior interests of the public.' (20 Mich., 452.[a])

This enlarged meaning given by the courts to the term ' public use,' renders it difficult to determine satisfactorily whether the delegation of the right of eminent domain to corporate bodies, by the bill under consideration, is for a use that can be sanctioned as public in its nature. The purpose for which the right is proposed to be given is, as in the case of railroads, new. The interest to be subserved is vast as a branch of productive industry, and important as affecting the prosperity of the country and the facilities of commerce. The interests affected and the character of the use are as public as in many cases in which the authority to take private property has been sustained by the courts of other States and of the United States, and in some instances in this State. The obvious objection that these pipe lines cannot be common carriers of merchandise, but must, necessarily, be restricted to a single commodity, would seem to be unsurmountable, if unembarrassed by judicial decision. But if the doctrine that a benefit to the public, instead of a use by the public, is to be recognized as excusing or justifying the delegation of this power, it is difficult to deny its exercise when only one article, if of general public consumption and utility, is to be transported. Until the question shall be authoritatively settled by the courts of this State, it cannot be said to be so clearly beyond the bounds of legislation as to require executive condemnation on the ground of unconstitutionality. It would seem to be advisable, therefore, in view of the contrariety of judicial opinion, the large interests involved and the great importance of the question, to allow the courts to determine whether the measure is in conflict with the Constitution. That will secure a final adjudication of the question upon thorough and learned consideration, and which, as emanating from the only tribunal authorized to pronounce conclusively upon a law, must command acquiescence and obedience. The bill in question applies all the features of a public use to the property authorized to be taken under its provisions which the Legislature can impart to it; declaration of the purpose, regulation of the manner of carrying on the business contemplated, and reservation of State supervision and control. But the judicial inquiry still remains whether the Legislature has overstepped the limits of its power, and I think your Excellency is fully warranted in permitting the bill to become a law, so that the courts may determine the grave and important question of its constitutionality.

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[a] **People ex rel. Detroit & Howell R. Co. v. Salem, 20 Mich. 452**

Very respectfully,

A. SCHOONMAKER, JR.,

Attorney General."

May 6.

**Memorandum filed with Senate bill, chapter 216, relating to the State survey.**

"The State survey, as originally proposed, contemplated a work of immense magnitude, of unlimited expense, and of little, if any, practical value to the people who were to pay for it. So long as it presented this appearance, I embraced every proper opportunity of placing upon record my earnest disapproval of it. I am now informed that the visionary and objectionable views originally entertained have been wholly abandoned, and that instead of surveying the whole State, it is proposed simply to fix, at small expense, a few points which may hereafter be used by any counties, towns or individuals, desiring to make surveys for themselves in accordance with the new system. The bill is approved for the reason that it is in harmony with this greatly modified and unobjectionable plan."

May 6.

**Memorandum filed with Senate bill, chapter 215, in relation to furnishing arms to the Albany Burgess Corps.**

"As a general rule, it is against sound policy, and is in conflict with the provisions of the Military Code, to supply arms to independent companies not subject to the laws or the discipline which govern the State militia, designated the National Guard. The Legislature has, however, made an exception in favor of the Albany Burgess Corps, which had a long and honorable history before the National Guard was organized, and which on various occasions voluntarily and without compensation rendered important services to the State. For these reasons the bill is approved, but with the distinct understanding that it is an exception to the general rule, and is not to be regarded as a precedent in any other case."

## THIRTY-DAY BILLS.

June 1.

**Veto of the following item in Assembly bill, chapter 373, amending the act of 1877, chap. 309, making appropriations for the payment of the expense of collection of tolls, superintendence, ordinary repairs and maintenance of the canals for the fiscal year, 1877.**

"For the construction of an iron bridge over the Champlain Canal, at Ship street, in the city of Cohoes, the sum of three thousand five hundred dollars, or so much thereof as may be necessary, to be expended under the direction of the Superintendent of Public Works."

"This item is objected to, and not approved. I am officially informed that there is no money in the treasury which can safely be applied to building bridges. A number of appropriations for the erection of such bridges were stricken from the annual supply bill, and the reasons given for their disapproval apply with equal force to this one."

June 14.

**Veto of Assembly bill, entitled "An act to authorize the formation of town insurance companies."**[18]

"Without discussing the wisdom of establishing town insurance companies upon the principles of this bill, I am of the impression that such companies, properly guarded and well administered, are not objectionable and may be very desirable, but after a careful perusal of this bill I am satisfied that there are numerous defects in it which would prevent any satisfactory administration of it, and would lead to difficulties which its advocates do not desire and would very much regret. It is much better, therefore, to leave it to be perfected at the next session of the Legislature."

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[18] See 1879, veto message of May 15, and note 23, for an act, chapter 287, authorizing the formation of county and town insurance companies, *post*, p. 387.

June 14.

**Veto of Senate bill, entitled "An act to protect the rights of citizens of this State holding claims against other states."**

"The Constitution of the United States does not permit a citizen to sue a State in the United States courts.[aa] This bill attempts to evade that provision by authorizing a citizen of this State holding any obligations of other States to assign his claims to the State, and to be prosecuted in the name of the State by the Attorney General for the benefit of the individual. In other words, it requires the State to lay down its dignity, its honor and its integrity as a sovereign State of the Union, and to become a collecting agent for speculators in State bonds, or written obligations against other States, and in so doing to evade the Constitution and to assume a false position by prosecuting claims in which it has no interest whatever."

June 14.

**Veto of Assembly bill, entitled "An act to change the location of the court house and clerk's office of Richmond county, by a majority vote of the Board of Supervisors of said county, and a vote of approval by the electors of said county."[19]**

"A fatal defect in this bill is that it makes its enactment dependent upon an affirmative vote of the electors of Richmond county. This has been repeatedly held unconstitutional, and so decided by the Court of Appeals."[bb]

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[aa] U. S. Const. 11th am.

[19] See L. 1885, chapter 160, authorizing the change of site of county buildings on the vote of two-thirds of two consecutive boards of supervisors, and a two-thirds vote of the people. The County Law, L. 1892, chapter 686, authorized the removal of a county seat by a majority vote of one board of supervisors, approved by a majority vote of the people.

[bb] Barto v. Himrod, 8 N. Y. 483.

June 14.

**Veto of Assembly bill, entitled "An act in relation to the commissioner of jurors in the city of New York."**

"The salary of the Commissioner of Jurors is much too large. One-third of the present compensation would be abundant. It should be under rather than over five thousand dollars. This bill seeks to reduce it by legislating out of office the present incumbent, and providing for the appointment of his successor within five days, who shall serve at a salary of seven thousand five hundred dollars per annum. The Constitution declares that 'the Legislature shall not pass a private or local bill * * * creating, increasing or decreasing fees, percentage or allowances of public officers, during the term for which said officers are elected or appointed.'[cc] Allowances include salaries.[20] If this bill declared that the salary of the present Commissioner should be reduced to seven thousand five hundred dollars, it would be a nullity. The form in which it is put is simply a device to evade the operation of the Constitution. If it may be legally evaded in this way, it may be in any case covered by its provisions. Firmly as I believe that this exorbitant salary is an outrage on the people, I am yet confident that so flagrant an attempt to nullify the organic law will prove far more costly than the payment of the salary during the term of the present officer. The same section which prevents the reduction of the Commissioners' salaries during his term also forbids the increase of their salaries. If it may be cheated once for a reduction, it may be cheated many times for less worthy objects.

Aside from its unconstitutionality, the bill contains the remarkable provision that a successor to the present incumbent shall be nominated fifteen days before his office is vacant, the Mayor being directed to appoint a successor within five days, and the office being declared vacant at the expiration of twenty days from the approval of the act. Believing that far more harm than benefit will result from this enactment, I am reluctantly compelled to withhold my approval from it."

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[cc] Const. 1846, art. 3, § 18, added 1874.

[20] The term "allowance" does not include a fixed salary. Mangam v. Brooklyn (1885), 98 N. Y. 585.

June 14.

**Veto of Assembly bill, entitled "An act to secure better public administration in the city of New York."**

"This bill is of the same character as are nearly all the long bills passed by the Legislature in relation to the city of New York. They usually contain as this one does a few very excellent sections surrounded by a great many others which are bad and mischievous. The latter so far overbalance the former as to render it certain that more injury than benefit will result from their becoming laws. A great number of such bills were passed by the Legislature in 1877, and nearly all of them were disapproved, very greatly to the relief and advantage of the city as is now very generally conceded. This bill is of the same character. I am, therefore, constrained to withhold my approval of it, and to express the hope that hereafter if the city persists in being governed at Albany, every bill embrace but one subject, and if possible but one section, so as to prevent good measures from being smothered by bad ones."

June 14.

**Veto of Assembly bill, entitled "An act relating to certain of the public burdens of the various cities of the State."**

"Repeated and careful readings of this bill have brought me to the conclusion, contrary to all my previous hopes, that it ought not to be approved. Its provisions are amazing. They violate not only constitutional provisions, but all sound principles of municipal government. The very title is deceptive, and the bill opens with a piece of jugglery. It pretends to have the name and character of a general bill, when its every section applies, and was designed to apply, only to the city of New York. It then proceeds to clothe the four officers composing the Board of Estimate and Apportionment with the most despotic and absolute powers. It authorizes and requires them 'to fix, determine and regulate * * * the fees, percentages, allowances and salaries provided for, in whole or in part, by tax, or from the proceeds of the obligations of the city, of all public officers, employes and others, which are or may be payable directly or indirectly out of the treasury, or the money of said city, and in regulating such fees, percentages, allowances and salaries,' the Board of Estimate and Apportionment is authorized, 'in its discretion, to reduce the number of such officers, employes and others, except judges and justices, and except as herein otherwise provided.'

This section confers upon the Board of Estimate and Apportionment full and unlimited power to dismiss every member of every board of commissioners except one. Selecting one member of each board for retention, they may dismiss all other Commissioners of the Police Department, Fire Department, Dock Department, Park Commission, Health Department, Board of Charities and Corrections, Commission of Taxes and Assessments, and all other boards, if any there are, except the Board of Education. Furthermore, the act gives to the Board of Estimate and Apportionment such absolute control over the compensation and pay of all departments as to put it in their power to utterly destroy any and every department if they choose. In distributing the amounts to be apportioned to the different boards, any amount, however small or large, will meet all the requirements of the bill.

The Board of Estimate and Apportionment is further authorized to ' regulate, fix and determine the sums to be applied and paid during any one year for any purpose which is or is to become a charge against or a burden upon said city, whether the same is fixed by special law or otherwise, except the proportion of the State tax to be paid by said city, and the amount required to be provided by law to pay or to be applied on account of any bonds or stocks of said city, payable from taxation, not otherwise provided for, and the interest on the bonded debt of the city.' It is difficult to say what mischiefs and wrongs may not be perpetrated under this sweeping and unlimited power. It authorizes general disregard of contracts and promiscuous violation of public faith. It nullifies alike the obligations of contract and statute liability. My attention has been called to one in particular of great magnitude. The act of 1875, chapter 300, in relation to the construction of the Brooklyn bridge, provided that the city of New York should pay one-third of the cost of building the bridge, and that the city of Brooklyn should pay the other two-thirds. This act was accepted and acted upon by both cities. Several millions of dollars have been paid by the city of Brooklyn on the faith of it, and some two or three millions have been advanced by the city of New York. The present act confers upon the Board of Estimate and Apportionment full power to repudiate that act and to violate the good faith to which the city was bound by it. No pecuniary advantage can compensate any community for a violation of its public faith; the pretended economy which cloaks the mischief of this bill would poorly pay the city for its broken credit and lost honor.

The attempted evasions of the provisions of the Constitution in regard to local legislation are too transparent to deceive any one who carefully reads the bill. In substance it is, from beginning to end, a local bill relating only to the city of New York. Consequently all its provisions in regard to the reduction of salaries, fees, percentage and allowances during the terms for which officers are elected or appointed, are absolutely void under section eighteen of article three of the Constitution. What advantage, then, is the city to receive from conferring upon the four individuals constituting the Board of Estimate and Apportionment these enormous powers? They were not chosen or appointed with reference to the exercise of any such arbitrary authority, yet the very existence of the government is put in their hands. They may overturn everything. They may destroy everything in the way of government. It is no answer to say that ' the local authority ' would not dare to abuse the powers thus conferred upon them. Why set the pernicious example of conferring upon them powers which they will not exercise because they dare not?

The city should have some great return for all this, and what is it? It is simply and briefly a direction to so arrange its estimates and apportionments as to reduce the expenses two millions of dollars below what they were in the previous year, and one million of that amount is to be taken from salaries. This and nothing more.

Suppose that the board do not in their wide discretion see fit to obey this direction, what is the remedy? There is no penalty for disobedience in the act. There is no specific thing defined in the law which they are to do, and to the doing of which they can be compelled by any court. There is, in short, no remedy and no punishment if the board choose not to follow the direction given in the bill. The result is that the bill gives away all the powers which have been mentioned, for nothing, and in so doing gives away the government of the city. It is another instance added to the many that have gone before, of the bad work of the Legislature when it acts as the Common Council of the city of New York. Nearly all the good which the local authority can accomplish much more than it would accomplish under this bill, it has already power to effect under the charter of 1873, if faithfully administered.

The much talked of tax reduction is not to operate on the levy of 1878, but is postponed to 1879, more than a year hence. Before that, another Legislature will have assembled and may pass a proper act. And generally as to the provisions of the bill, it may be said that they largely consist of the delegation to the Board of Estimate and Apportionment of powers not vested in the Legislature itself, and which it could not give away. Its only real effect would be to inaugurate colossal litigation to determine what powers if any were constitutionally conveyed by it.

There is another view of this deceptive and double-faced bill which seems to me conclusive. It is craftily drawn under the pretense of being a general bill. If this pretense is false, and if the bill is in reality a local bill applicable to the city of New York alone, there can be no pretense that it is constitutional. It would, in that case, be absolutely void. On the other hand, if the pretense is not false, if the bill is in reality what it claims to be and what it must be to have any vitality, it applies to every other city in the State and is of deep concern to them. It clothes 'the local authority,' whether a Common Council or a Board of Estimate and Apportionment, with all the despotic and unlimited powers conferred upon that board in the city of New York. It practically overturns the charter and administration of every city in the State. If any of them have Boards of Estimate and Apportionment, as the bill would seem to imply, they are imperatively required to reduce their expenses by two millions of dollars a year. The operation of this requirement may be illustrated by reference to the city of Albany, which has a department established by law which answers in its powers and duties and its administration substantially to the Board of Estimate and Apportionment in the city of New York, although it is not called by that name. As it has similar powers and duties there is no good reason why it should not be regarded as such a board, no matter by what name it may be called; and if it be regarded as such a board then this bill imposes upon it the duty of reducing the expenses of the city of Albany to the extent of two millions of dollars per year, when its ordinary expenses are only about one-fourth that sum.

In conclusion I am constrained to repeat what I have so frequently said before that until the city can have a charter and a local government representing its people, and acting for it at home, it is far better for them to be without legislation than to come to Albany for it."

June 14.

**Veto of Senate bill, entitled "An act relative to the justices of the Supreme Court in the Third Judicial District."[21]**

"For many years the most eminent judges on the bench of the Supreme Court, and in the Court of Appeals, received annual salaries of twenty-five hundred dollars per year. Subsequently the salaries were raised to thirty-five hundred dollars, and still later to six thousand dollars per year, with a *per diem* allowance of five dollars for every day in which the judges were absent from home upon official duty. In lieu of this *per diem* allowance a gross sum of twelve hundred dollars per year was afterwards allowed annually to the Judges of the Supreme Court, making their pay seven thousand two hundred dollars per year, which is the amount at present paid to them, except in the First and Second Districts. In the First District the compensation has been carried up to the extravagant sum of seventeen thousand five hundred dollars per annum. In that part of the Second District composed of Brooklyn and the county of Kings it has been raised to thirteen thousand two hundred dollars, and in the residue of the Second District twenty-five hundred dollars a year has been added, so as to make the pay of the two judges not residing in Kings County nine thousand seven hundred dollars. The reaction from the salaries of twenty-five hundred dollars, which were universally admitted to be too small, has been somewhat violent, and has carried the salaries up to a higher point than was contemplated by anybody when it commenced. As one extreme usually follows another, there will very likely be reaction downward if the salaries be crowded upward to a higher figure. Already complaint is heard on every hand of the extravagant compensation paid in the First and Second Districts, and a bill has passed both houses of the Legislature containing a provision requiring the salaries of all newly elected judges to be cut down to a sum not exceeding ten thousand dollars in those cities. At such a time as the present, when the wages of labor are falling everywhere, when the prices of commodities are also falling, when the expenses of living are diminishing, and when the payment of taxes has become oppressive to all and distressing to many, the bill under consideration proposes to increase the compensation of the judges of the Third District from seven thousand two hundred dollars to nine thousand seven hundred dollars, an amount greater by two hundred dollars than is paid to the Chief Justice of the Court of Appeals, and greater by seven hundred dollars than is paid to either of the Associate Justices of the Court of Appeals; greater by twenty-five hundred dollars than is paid to either of the Justices of the Supreme Court in the other five districts of the State; greater also by three thousand seven hundred dollars than is paid to the Comptroller of the State, Superintendent of Public Works and Superintendent of State Prisons, whose labors and responsibilities are not surpassed by those of any judge; and greater by four thousand seven hundred dollars than is paid to either of the other State officers, with a single exception. If this bill becomes a law, the judges of the other five districts will, of course, claim to be put upon equality with those of the Third District, and it surely cannot be expected that the Judges of the Court of Appeals will be content to serve for a less compensation than is paid to the Judges of the Supreme Court.

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[21] As to the meaning of the term "allowances" see Mangam v. Brooklyn (1885), 98 N. Y. 585. As to the meaning of the term "extra compensation," see Mahon v. Board of Supervisors (1902), 171 N. Y. 263; Truesdale v. Rochester (1884), 33 Hun 574.

There is another and an unanswerable objection to the bill. It is clearly unconstitutional. There is no more wholesome principle embedded in our Constitution than that which declares that the compensation of a public officer shall not be increased or diminished during the term for which he was elected or appointed.[dd] It guards the faithful officer from any hostility which may be provoked by a fearless and honest discharge of his duty. It also guards the public against importunate appeals made to the Legislature by public officers who may be disposed to wield the power and influence of their positions to obtain an increase of their pay. It was originally and for a long time an express and special provision of the Constitution, as to the Judges of the Supreme Court, that their compensation should neither be increased or diminished during their official terms.[ee] The same general restriction was put upon the salaries of all State officers. Unfortunately section 14 of article 6 of the Constitution, as amended in 1869, asserted only half of the rule. It declared that the compensation of the judges should not be reduced during their term. It said nothing in regard to their being increased. On that point it was entirely silent. It was assumed that by implication they might be increased, and repeated efforts, usually successful, were made to increase them until they were raised to their present amounts. The Constitutional Commission which sat in 1873, four years subsequent to the amendment and mutilation above referred to, determined to close, as effectually as language could close it, this open door. Section 18 of article 3, as adopted in 1874, declares that ‘the Legislature shall not pass a private or local bill * * * creating, increasing or decreasing fees, percentage or allowances of public officers during the term for which said officers are elected or appointed;’ and section 24 of the same article, adopted at the same time, provides further, that ‘the Legislature shall not, nor shall the Common Council of any city, nor any Board of Supervisors, grant any extra compensation to any public officer, servant, agent or contractor.’

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[dd] Const. 1846, art. 3, §§ 18, 24, added 1874.

[ee] Const. 1846 art. 6, § 7, see jud. art. 1869, § 14.

It is said that section 18 does not apply to this bill because it is not a local bill. As the bill affects only the seven counties composing the Third District, and has no relation to the other fifty-three counties, and as it affects only the four justices in the Third District out of the thirty-three justices in all, I do not see why it is not to all intents and purposes a local bill. It has no relation to the jurisdiction, powers or duties of the judges. It simply relates to an extra compensation to be provided for them by the local district. But be that as it may, the twenty-fourth section makes no reference to a local bill. It is general, and provides that no extra compensation shall be paid to any public officer. It uses the very same word ‘compensation’ which is used in the 14th section of the 6th article. If the word was used in place of the word ‘salary’ in that section, it was used in the same relation in this twenty-fourth section. It is impossible to construe these words, it seems to me, in any way which will admit of the payment of an extra or additional compensation over and above that which was fixed by law when the justices accepted their offices, and which cannot under these provisions be either increased or diminished during their terms of office.

It is conceded that the twenty-fourth section of the third article forbids the Legislature to grant any single sum as extra compensation to a public officer, but it is said that this does not extend to a provision increasing the salary of an officer during his term. I cannot myself see why, if the Constitution prevents the grant of a single sum as an extra compensation for a single year, it does not with ten times more force nullify a bill which in its own language grants a sum of twenty-five hundred dollars to each judge of the Third District, 'in addition to the compensation now allowed by law,' for each and every year of the next ten. It seems to me that the most technical and refined construction cannot torture the meaning of the 24th section into anything else than what it fairly and clearly expresses. No extra compensation shall be made by the Legislature or Board of Supervisors. The first and leading definition of the word 'extra,' as given in Webster's Dictionary, is 'something additional,' and this bill defines for itself that the twenty-five hundred dollars is an additional compensation, that is to say, an extra compensation. It is so much over and above the compensation fixed by law for which the judges virtually contracted to serve when they accepted their offices, and the Supervisors are required in each and every year to levy and pay over this additional compensation; that is, the bill requires them to do precisely the thing which the 24th section says they shall not do.

And it is proper for me to add that I was a member of the Constitutional Commission of 1873, and that while I concede that the language of the Constitution is to be construed as it is written, my own recollection is so positive that the intention of the framers of the amendment in the third article was to destroy, root and branch, the possibility of an increase of compensation during an official term, that I should do less than my duty if I failed to protest against a construction which would nullify both the intention and the words. There can be no injustice in this. The State can never afford to put itself in a position of doing injustice. No man is bound to accept an office if he objects to the amount of compensation fixed, and no man is bound to retain an office which does not afford him sufficient compensation.

It is said that the 14th section of article sixth is unaffected by the amendments, because it was not repealed or abrogated by them. The answer to this is, that there was nothing to repeal or abrogate. There was no affirmative authority in section fourteen to increase salaries during the term, consequently it could not be repealed. It was sufficient to forbid the increase as to every public officer in the State, by an amendment of the Constitution adopted some years later than the sixth article. This the twenty-fourth section clearly and emphatically does. These reasons compel me to disapprove the bill."

June 14.

**Veto of Senate bill, entitled "An act amending the Code of Civil Procedure."**

"Several acts amending single sections of the Code of Procedure have been passed and approved during the recent session. This bill contains about seventy additional amendments, and they are made in the same form in which amendments are usually made to cases and bills of exception, that is, striking out and inserting various words and sentences. They do not give the section as it will read when amended, consequently it will require two men to apply the Code as amended by this bill, one to read the sections as they stand, the other to read the amendments to them. Undoubtedly some law-book publisher will publish a compilation undertaking to insert these amendments in their proper places, but such compilation will not be law and may not be reliable. The bill would only add to the uncertain condition in which the Code now is. The whole thing seems to me so hopeless that the more it is worked at and amended the worse it becomes."

June 14.

**Veto of Assembly bill, entitled "An act in relation to elections in the city of Albany, and to provide for ascertaining by proper proofs the citizens who shall be entitled to the right of suffrage thereat."**

" The Constitution, article 3, section 18, declares that the Legislature shall not pass a local bill for opening or conducting elections. This bill is from its title to its last section entirely local, relating to the city of Albany, alone, and is, of course, in conflict throughout with the provisions of the Constitution referred to."

June 14.

**Veto of Assembly bill, entitled "An act to provide for the appointment of Special Game Constables."**

" Nothing will be gained by the approval of this bill as no appointment can be made under it until the next session of the Legislature, inasmuch as all nominations for those offices are to be confirmed by the Senate.

No less than fifteen bills were passed by the Legislature for the protection of ' moose, wild deer, birds and fish.' Of these a great many were amendments of the same sections of former laws. The result would be, if any or all of such bills should be approved, that the last one approved would nullify all that went before it. Besides this difficulty I find that all these game laws fix heavy penalties for their violation, whilst they put the law into such disorder and confusion that no man could ascertain what would be a violation of it. I am wholly unable to ascertain this for myself after a most careful examination of these bills. I have, therefore, determined not to approve any of them, but to leave the whole matter to the action of the next Legislature when, if the game laws need so much amendment, a well-considered, consistent and intelligible bill should be passed covering the whole ground."

June 14. The omnibus veto included the following bills:

## GAME LAWS.

Amending chapter 411, laws of 1877, amending the game laws.

Supplemental to chapter 421 of the laws of 1877, relative to the preservation of game.

Amending chapter 421, laws of 1877, relative to preservation of game, birds and shell-fish.

For the preservation of fish in Monroe county.

Amending the general game law.

Amending act of 1877 for the preservation of birds, fish, etc.

Amending chapter 721, laws of 1871, relative to preservation of birds, fish, etc.

Amending act for protection of private parks, where same are in the North Wilderness.

To protect spawning fish in certain portion of Hudson river.

For preservation of fish in waters in or adjacent to Kings county.

Prohibiting the taking of certain kinds of fish in Loon lake.

Amending chapter 347, laws of 1876, relative to the preservation of fish, etc.

## GENERAL LAWS.

Amending act for appointment of a State agent for the guidance and employment of discharged convicts. (Giving to each discharged convict a gratuity of ten dollars for each year served, not exceeding forty dollars.)

Relative to repaving Hudson avenue, in Albany. (Bill was never duly passed, but was certified and reached the Governor through error on part of clerks.)

Relative to the journals of the Senate and Assembly.

Extending jail limits of Ulster county.

Excepting Queens, Sullivan, Putnam, Onondaga, Columbia and Madison counties from provisions of county treasurers' act.

Amending the charter of Rome.

Relative to granting licenses to sell intoxicating drinks. (Terminating all licenses on the first of May in each year.)

Relative to District Attorneys. (Provides for filing certain stenographic notes.)

For the relief of Port Byron free school district.

Relative to the bonded indebtedness of White Plains.

Relative to certain portions of the Chenango canal.

Facilitating the collection of unpaid taxes in Long Island city.

Amending act for incorporation of religious societies. (Declaring certain churches extinct.)

Relative to the collection of taxes in Plattsburgh.

Reappropriating the unexpended balances of chapter 425 of the laws of 1876.

Extending the corporate existence of the Middletown and Wurtsboro Turnpike Company.

Authorizing the village of Valatie to borrow money for the purposes of a public hall.

Amending the general village act. (Relative to constables of towns acting in incorporated villages.)

Facilitating the discharge of debtors imprisoned by virtue of executions in civil cases.

Facilitating the discharge of debtors imprisoned by virtue of executions in civil cases.

To prevent the removal of actions by foreign insurance companies to the United States Circuit Court.

Amending act for improvement of Cayuga creek road, in Erie county.

Amending section 1,331 of the Code of Civil Procedure.

Amending the charter of Cohoes.

Relative to union free school district in towns of Tyrone and Wayne.

Making effectual judicial decrees against unknown owners.

Amending county treasurers' act relative to Kings County.

Amending insurance law relative to examinations by Superintendent.

Amending Buffalo police act.

Amending charter of the University of New York.

Incorporating the Homeopathic Medical College of Buffalo.

Defining the jurisdiction of the Canal Board and the Board of Canal Appraisers.

Relative to devises and bequests to charitable, religious and other societies. (Limiting the amount which an individual may devise.)

Amending general railroad act of 1869.

Relative to certain streets in Long Island city.

Amending Revised Statutes, providing that devises and bequests in certain cases shall not lapse.

Amending act for improved system of canal towage. (Appropriating $5,000 for testing plan of Halsey H. Baker.)

Amending act for improved system of canal towage. (Appropriating $5,000 for testing Stevenson's system.)

Providing compensation for referees in certain cases. (Requiring a county to pay ten dollars per day to referees appointed to investigate charges against attorneys or counsellors, and makes law applicable to investigations now pending.)

Amending act encouraging planting of shade trees.

Amending excise laws so far as relates to Ontario county. (Relative to publication of habitual drunkards.)

Exempting the real estate of the House of Good Shepherd in Rockland county from taxation.

Amending insurance laws. (Providing that companies may invest in village bonds.)

Amending County Treasurers' act so far as it relates to Oswego county.

Relative to the Supervisors of Erie county.

Amending act to prevent false and deceptive statements by fire insurance companies.

Relative to the boundaries of the city of Rochester.

Relative to railroad bonds of Vienna and Constantia.

For the distribution of the funds now standing to the credit of the National Life Insurance company in the Insurance Department.

Relative to the abandonment of the Clyde and Rose Plankroad.

For the relief of Abel Crook.

Amending act defining exemptions from taxation on public buildings. (Provides that buildings in New York and Brooklyn not used exclusively for religious or school purposes shall not be exempted from taxation.)

Extending the time for the sale of the Genesee Valley canal.

Amending Metropolitan sanitary act, so far as relates to Newtown.

Amending the general plankroad and turnpike corporation act.

Amending charter of Syracuse.

Relative to the Colored Home in New York.

For the relief of John Waller, Jr.

Changing the name of the American Loan Company.

Relative to the Ladies' Deborah Nursery and Child Protectory of New York city.

Amending the charter of Brooklyn.

For better security of life from fire in hotels and other buildings. (Requires fire escapes to be erected on all buildings of more than three stories.)

Authorizing Common Council of Lockport to purchase a hose carriage.

Relative to the publication of session laws in Rensselaer county. (Requiring same to be published, in addition to papers now designated, in one paper in Second and Third Assembly districts.)

Relative to the publication of notices of sales in foreclosure in New York city. (Provides that notices shall be published in paper now required to publish legal proceedings in New York, and also in one other of the ten papers having the largest circulation.)

For building a dam across the Chemung canal at Horseheads.

Authorizing Syracuse, Chenango and New York railroad to use the towing path of the Chenango canal.

Relative to non-resident highway tax of Thurman.

Authorizing police departments of cities to appoint policemen of district telegraph companies.

For the deposit of records of supervisors and the preservation of same in County Clerks' offices.

Repealing the Black Lake drainage act.

Concerning the limits and jurisdiction of the States of New York and Connecticut.

For the removal of refuse matter in the city of New York.

Amending the general railroad act relative to sinking funds of towns, etc.

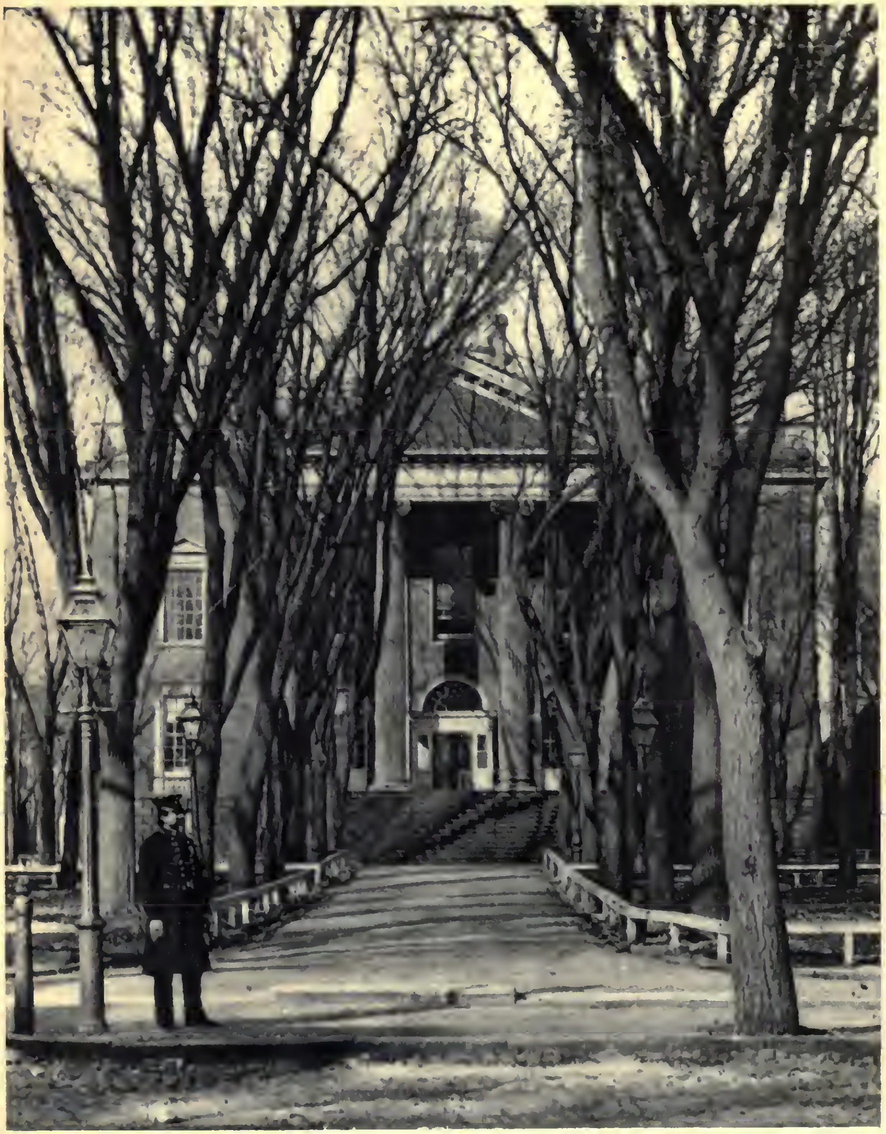
For the relief of the Lutheran cemetery at Newtown.

Relative to steam elevators. (Requiring certain traps or coverings for openings.)

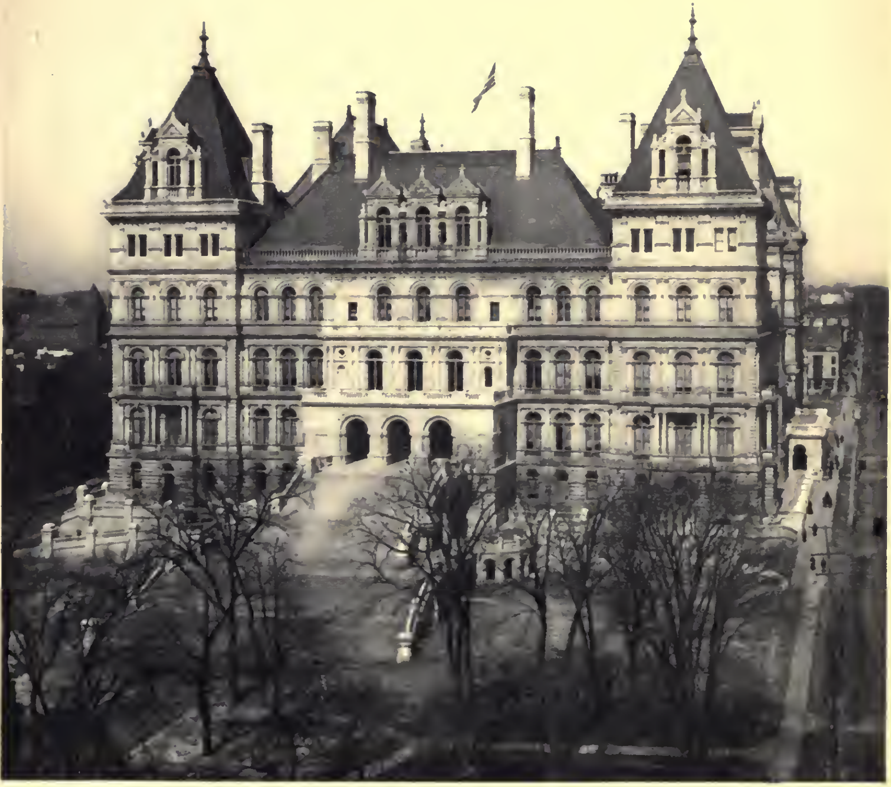
Incorporating the Brewer Fire Company of Monsey, Rockland county.

Amending Banking act of 1849, relative to the liability of stockholders.

Relative to the preservation of records in New York city. (For publishing records of conveyances in the Real Estate Record and Builders' Guide.)



Old Capitol



*New Capitol*

## 1879. JANUARY 7. LEGISLATURE, ONE HUNDRED AND SECOND SESSION.

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### LUCIUS ROBINSON, Governor.

The Legislature occupied the New Capitol at this session for the first time. The Assembly Journal of January 7 says:

"At 10:35, a. m., the members of the Assembly elect assembled at the Assembly chamber in the Old Capitol, and at 10:45 they were escorted by the Senate, preceded by Lieutenant-Governor Dorsheimer, to the Assembly chamber in the New Capitol building, where the chamber was formally delivered to the Assembly by Hon. Wm. Dorsheimer, Lieutenant-Governor, as President of the New Capitol Commission."

The Senate journal recites that after escorting the Assembly to its room in the New Capitol, the Senate "proceeded to the room prepared for the temporary use of the Senate in the same building."

On the 23d of January, the Legislature adopted a concurrent resolution, providing for the appointment of a joint committee of three from each house "to arrange for a formal ceremony to commemorate the departure of the Legislature from the Old to the New Capitol."

On the 29th of January the joint committee presented the following report to both houses:

"To THE LEGISLATURE.—Your committee appointed by joint resolution of the two Houses, on the 25th* day of January, 1879, to consider the question of commemorating the removal of the Legislature from the Old to the New Capitol, beg leave respectfully to report as follows:

---

* Error; the Legislature was not in session on the 25th; the Assembly members of the committee were appointed on the 23d, and the Senate members on the 24th.

We recommend that such removal be commemorated by the following observances:

The Senate and Assembly will meet in joint convention in the Assembly chamber, on the 12th day of February next, at 7½ o'clock P. M.

The Governor and his military staff, the Chief Judge of the Court of Appeals and the associate judges thereof, and the State officers, will be invited to be present.

The order of procedure for the joint convention will be as follows:

Prayer.

Introductory address by the Lieutenant-Governor.

Address by the Speaker.

Historical address by Erastus Brooks, member of Assembly.

Benediction.

We further recommend that a joint committee be appointed to carry out the foregoing arrangement of procedure.

All of which is respectfully submitted.

HAMILTON HARRIS,
W. H. ROBERTSON,
ALEXANDER T. GOODWIN,
Senate Committee.

GEORGE B. SLOAN,
J. W. HUSTED,
ERASTUS BROOKS,
Assembly Committee."

The same committee was continued for the purpose of carrying out the program contained in the foregoing report.

On the 12th of February the commemorative exercises were held as outlined by the Committee. By special invitation the judges of the Court of Appeals attended in a body. Lieutenant-Governor Dorsheimer presented the following communication from Governor Robinson:

## STATE OF NEW YORK:

"EXECUTIVE CHAMBER,
ALBANY, *February* 12, 1879.

Hon. WILLIAM DORSHEIMER, Lieutenant-Governor:

DEAR SIR.—I find, with extreme regret, that I shall be deprived of the privilege of listening to the addresses of yourself, Speaker Alvord and Mr. Brooks, this evening, as I had hoped to do. Every moment of my time is occupied with official duties of unusual urgency. I see, moreover, by the morning papers, that the ceremonies are expected to occupy three or four hours, and I am advised by my oculist that there would be a great danger of entirely arresting the improvement going on with my eyes if I should expose them to the gas-lights in the Assembly chamber even for one-fourth of that time, and he protests against it most earnestly.

I am, with great respect, yours, very truly,

L. ROBINSON."

The exercises consisted of a prayer by Bishop William Croswell Doane of Albany, speech by the Lieutenant-Governor, William Dorsheimer, by the Speaker of the Assembly, Thomas G. Alvord, and a historical address by Erastus Brooks, a member of the Assembly. The full text of the speeches, and the address may be found in the Senate and Assembly journals of 1879.

## ANNUAL MESSAGE.

## STATE OF NEW YORK:

EXECUTIVE CHAMBER,
ALBANY, *January* 7, 1879.

TO THE LEGISLATURE.—The event which first claims attention is your removal into the New Capitol. The condition of the appropriation of last year has been so far fulfilled that the Assembly Chamber is substantially completed.

The room intended for the Court of Appeals has been fitted up for the temporary use of the Senate, the court in the meantime occupying the old Senate chamber. All the rest of the building, except the Attorney General's office, remains unfinished. Many millions of dollars and years of time will be required to complete it, although the sum already expended upon it amounts to $9,276,615.36. My views in regard to the extravagant cost of the building, its ostentatious exterior and most inconvenient interior, have been frequently expressed, and they remain wholly unchanged. The subject of further appropriations for the work will be presented in another part of this message.

I sincerely hope that you will find the change conducive to your health and comfort, and in every way so agreeable and convenient that you will not regret it. If the occupation of their new and gorgeous apartments shall lead the two houses of the Legislature to so emulate the exalted virtues which have, at different times and on many occasions, adorned the history of the old chambers, that they shall enact only wise and good laws; that they shall honestly and faithfully execute the great trust committed to them by the people; that they shall strictly obey the Constitution and the laws; that they shall establish and maintain a higher tone of public morality, the enormous cost of the building will be repaid in something better than money. But if, on the other hand, no such effects appear; if the lamentable vices, which have too often marked the legislation of the old building, shall stain that of the new; if the extravagant expenditure made upon it is to stimulate profuse and wasteful appropriations to other objects; if, instead of encouraging a plain and honest republican simplicity, it is to cultivate a weak and vain desire to imitate the manners of European courts or to rival regal magnificence and imperial splendors; nay, more, if bribery and corruption, following naturally in the wake of such influences, shall soil the new chambers, the people will have cause to regret the erection of such a Capitol, and to wish that the earth might open and swallow it up.

I trust that you may be so enlightened and guided by divine wisdom, that you may choose and follow the better path.

## FINANCES.

You will be pleased to learn that the financial affairs of the State are in a more satisfactory condition than they have been at any time within a long series of years. It has no longer any General Fund debt, any bounty debt, nor any floating debt. These have all been paid and extinguished. A small remnant of the canal debt alone remains to be provided for. The able and faithful management of the financial department has maintained a steady and uninterrupted advance towards lower expenditures, lower taxes and a rigid accountability for all payments from the treasury. This is strikingly illustrated by the following statement:

| | |
|---|---|
| In 1874 the State tax was................ | $15,727,482.08 |
| In 1875.............................. | 14,206,680.61 |
| In 1876.............................. | 8,529,174.32 |
| In 1877.............................. | 8,726,511.01 |
| In 1878.............................. | 7,941,297.94 |

The administration of the affairs of the canals and of the State prisons under the new systems, through single officials and responsible heads, exhibits the most satisfactory results in the same direction. No reformation in State affairs and finances was ever more thorough and complete.

But for the school tax and the enormous demands for the New Capitol the tax levy would not be more than about one-half the present amount.

The following statement gives a general account of the financial operations of the year:

| | |
|---|---|
| Aggregate balances in the treasury of all the funds, October 1, 1877 | $5,759,434.22 |
| Aggregate receipts during the fiscal year ending September 30, 1878 | 12,404,505.01 |
| | $18,163,939.23 |
| Deduct payments during the year | 13,870,055.69 |
| Balance in the treasury September 30, 1878 | $4,293,883.54 |

| | |
|---|---|
| The amount of receipts into the treasury, on account of the General Fund revenue, during the year ending September 30, 1878 | $6,097,469.29 |
| The payments | 6,983,307.67 |
| Apparent deficiency September 30, 1878 | $885,838.38 |

### SUPPLEMENTARY STATEMENT.

| | | |
|---|---|---|
| Balance due from County Treasurers September 30, 1878, on State tax of 1877 | | $1,385,369.09 |
| Add amount paid on account of 1878 appropriations, included in tax levy of last year, payable in State treasury in April and May, 1879 | | 1,159,017.01 |
| | | $2,544,386.10 |
| Deduct apparent deficiency of the revenue September 30, 1878, as shown in preceding statement | $885,838.38 | |

| | | |
|---|---|---|
| Also balances of 1877 appropriations, unpaid and in force September 30, 1878... | $266,643.21 | |
| | | $1,152,481.59 |
| Actual surplus September 30, 1878.... | | $1,391,904.51 |

The details of the foregoing statement and of the accounts with the separate funds will be found fully and clearly stated in the Comptroller's report:

### *Debt.*

On the 30th September, 1877, the total Funded Debt was $10,957,054.87, classified as follows:

| | |
|---|---|
| General Fund. . . . . . . . . . . . . . . . . . . . . . . . . . | $926,694.87 |
| Canal. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . | 9,900,360.00 |
| Bounty. . . . . . . . . . . . . . . . . . . . . . . . . . . . . | 130,000.00 |
| | $10,957,054.87 |

On 30th September, 1878, the total Funded Debt was $9,154,054.87, classified as follows:

| | |
|---|---|
| General Fund. . . . . . . . . . . . . . . . . . . . . . . . . . | $122,694.87 |
| Canal. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . | 9,020,360.00 |
| Bounty. . . . . . . . . . . . . . . . . . . . . . . . . . . . . | 11,000.00 |
| | $9,154,054.87 |

The General Fund State Debt is all paid, and the item of $122,694.87, included above, represents the amount required to yield, at the rate of six per cent, the sum necessary to pay the Indian annuities. The balance of $11,000 of bounty debt had not been presented for redemption at the close of the fiscal year. A balance of $1,012,328.18 in the Canal Sinking Fund leaves the amount of that debt unprovided for, September 30, 1878, at $8,008,031.32.

| | |
|---|---|
| The State debt, on the 30th September, 1877, after deducting the unapplied balances of the Sinking Funds, amounted to........ | $8,707,663.85 |
| On the 30th September, 1878 (including $122,694.87) to.................... | 8,130,726.09 |
| Showing net contributions to the Sinking Fund of.................... | $576,937.16 |
| The actual reduction of the debt during the same period by cancellation, being...... | $1,803,000.00 |

### TAXATION.

The tax levy for 1878 was at the rate of 2 9-10 mills, and will produce $7,941,297.94, as against $8,726,511.01 for the previous year.

The State receives very little revenue for the payment of its expenses from any source except direct taxation. The mode of levying and the time of paying the taxes make it important that the Legislature should give special attention to the nature of the balance found in the General Fund, at the close of the fiscal year, on the 30th of September. The report of the Comptroller submitted to the Legislature, on the first of January last, showed that there was a balance, on the 30th of September, 1877, amounting to $1,104,465.21, and that there would be an estimated balance of $1,754,565.01 on the 30th of September, 1878. His report, prepared for submission to the Legislature at its present session, shows that there was a balance on the thirtieth of September last, of $2,101,904.51, exceeding the estimate by $437,339.50. The Legislature having directed the payment of the New Capitol appropriation out of this balance, the payments to the New Capitol Commissioners up to September thirtieth, amounting to $800,000, should be deducted from this apparent balance. This deduction leaves an actual balance on the thirtieth of September last, of $1,391,904.51. The same report shows that there will be an estimated balance, on the thirtieth of September next, amounting to $1,073,896.83. But the taxes levied to cover the appropriations for the fiscal year commencing on the first of October are not actually paid into the treasury until the next April. This is the case in each year. It will be seen, therefore, that these balances which are unappropriated on the thirtieth of September, become appropriated the very next day by the general appropriation act passed for the fiscal year commencing on the first of October, and that they are the only means which the State has, without borrowing from other funds, to carry on the government for the space of six months — that is, until the receipt of the taxes in the next April. It will thus be seen that any appropriation like the one made for the New Capitol in the last Supply Bill, out of an unappropriated balance in the treasury, is based on a delusion. There is no unappropriated balance on and after the first of October. On the contrary, there is and must be a deficiency in each year, to be met by borrowing from other funds in anticipation of the taxes which will be received six months after the payments commence. It would be more consistent if the taxes could be made payable on the first of October, at the time when the payments on account of them commence, or if they could be divided and one-half paid on the first of October, and the other half on the first of the following April. The present practice, however, has prevailed so long and the operations of the treasury have become so accustomed to it, that it is not likely that any change in that respect will be made, but it will be seen from the foregoing statement, that an appropriation out of an unappropriated balance in the treasury is liable to mislead, and that such phraseology should be avoided. Above all, let it never be forgotten that every appropriation of any considerable amount must be provided for either by a special tax, or else by an increase to the amount of it in the general tax levy.

## CANALS.

The Legislature will be gratified to learn that the new system of canal administration has fully met the most sanguine expectations of its friends. The efficiency, economy and integrity of one responsible executive head have been amply illustrated in the first year of the experiment. The Superintendent of Public Works entered upon the duties of his office on the 8th day of February last. By his prompt and energetic exertions, favored by a mild spring, he was able to open the principal canals on the 15th day of April and kept them open until the 7th day of December. During the whole period of navigation, the canals have been kept in excellent order and the boatmen have had a very prosperous season. The total tonnage for the whole season of navigation amounted to 5,170,822 tons against 4,955,963 tons for the year 1877, showing an increase of 214,859 tons. At the same time there has been a large reduction in the cost of maintenance and operation.

| | |
|---|---|
| The entire expenses of operating the canals for the fiscal year ending September 30, 1877, as reported by the Auditor, including salaries of officials and miscellaneous expenses chargeable to the revenue of the canals, amounted to. . . . . . . . . . . . . . . . . . . . . . | $1,050,329.68 |
| The corresponding items for the fiscal year ending September 30th, 1878, aggregate but . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . | 739,748.97 |
| Showing a decrease of . . . . . . . . . . . . . . . . . . | $310,580.71 |

This saving is the more gratifying since, as above stated, the canals were not transferred from the Commissioners to the Superintendent until February eighth last, and the new system had, therefore, been in operation less than eight months at the close of the fiscal year. It is but fair to add, that while the expenses have thus been decreased more than thirty per cent, the canals have been kept in excellent condition, and have been open to navigation 237 days during the season of 1878 against 214 in 1877, and 211 in 1876.

| | |
|---|---|
| The net revenue for the fiscal year ending September 30, 1878, was.................. | $248,902.38 |
| Net revenue for the fiscal year ending September 30, 1877 ......................... | 3,031.33 |
| Showing an increase of................ | $245,871.05 |

These results have been obtained whilst the Superintendent was obliged to contend with all the embarrassments incident to the inauguration of a new system, as well as the hostility of many individuals and interests wedded to the old system because of the profits they had derived from its abuses. Now that the system is fully organized and has given such evidence of its value as to command the approbation of all good men, there is no reason to doubt that another season of navigation will show still more gratifying results.

The following brief statement shows what has been achieved since the reformation of gross abuses in canal management was undertaken in 1875.

AMOUNTS EXPENDED FOR COLLECTION, ORDINARY REPAIRS AND OTHER EXPENSES PAYABLE FROM REVENUES.

| | |
|---|---|
| 1874. . . . ................................ | $1,469,466.83 |
| 1875. . . . ................................ | 1,467,315.95 |
| 1876. . . . ................................ | 1,149,194.61 |
| 1877. . . . ................................ | 1,050,329.68 |
| 1878. . . . ................................ | 739,748.97 |

### FOR EXTRAORDINARY REPAIRS, IMPROVEMENTS, DAMAGES, AND INTEREST THEREON PAID FROM PROCEEDS OF TAXES.

| | |
|---|---|
| 1874 | $2,373,425.92 |
| 1875 | 1,284,222.77 |
| 1876 | 510,650.18 |
| 1877 | 267,812.80 |
| 1878 | 163,598.05 |

### TOTAL PAYMENTS ON ACCOUNT OF CANALS, EXCLUDING PRINCIPAL AND INTEREST, CANAL DEBT.

| | |
|---|---|
| 1874 | $3,842,892.75 |
| 1875 | 2,751,538.72 |
| 1876 | 1,659,844.79 |
| 1877 | 1,318,142.48 |
| 1878 | 903,347.02 |

These figures are more eloquent than words and may be safely left to speak for themselves. No honest and intelligent mind can require any comment upon them, or desire any return to the old and corrupt methods. Along with the results thus achieved, the tolls have been reduced to a point lower than ever before known, and a great many articles have been placed upon the free list. Although, in my opinion, the requirements of the Constitution[a] render it probably dangerous to attempt further reduction of tolls, it is matter for congratulation that they have been brought to so low a point that all the advantages of free canals are substantially attained without the injustice of taxing the people for their maintenance.[1]

---

[a] Const. 1846, art. 7, §§ 1, 2, 3, am. 1854, § 6, am. 1874.

[1] By resolutions adopted in March, the Legislature concurred in an enlargement of the free list, and a further reduction of tolls on other articles. Concurrent resolutions were also adopted proposing constitutional amendments abrogating sections 1 and 2 of article 7, and renumbering and amending other sections, and including a provision for a canal fund, to be composed of proceeds from the disposition of lateral canals and unexpended balances of gross receipts from tolls, $400,000 appropriated by chapter 425, L. 1876, which sum was transferred to the new fund, and under extraordinary circumstances,

## STATE PRISONS.

You will learn from the report of the Superintendent of State Prisons that the reforms established in that department have been going on most successfully during the past year. The excess of expenses over earnings in 1876 was $704,379.85. In 1877, when only a portion of the year was under the management of the Superintendent, the excess of expenses over the earnings was $369,688.08. In 1878 the excess of expenses over earnings was $229,971.83.

In this amount, however, are included some large special appropriations for permanent improvements to the prisons, including a railroad from Dannemora to Lake Champlain, and a permanent wall and iron fence at Sing Sing. The Superintendent's report shows that, excluding these and some other special appropriations, the excess of expenditures for the support and maintenance of the prisoners over earnings amounts to but $67,800.45.

The prison at Sing Sing, which was in the worst condition when the Superintendent took charge of it, now not only supports itself, but pays a revenue toward the support of the other prisons. The following is the statement of results for the fiscal year, furnished to me by the Superintendent:

| | |
|---|---|
| Auburn, excess of expenditures........... | $34,179.24 |
| Clinton, excess of expenditures........... | 77,027.64 |
| | $111,206.88 |
| Sing Sing, excess of earnings............. | 43,406.43 |
| Total amount of expenditures over earnings, exclusive of special appropriations for wall, railroad, new shops, etc........................ | $67,800.45 |

---

to be determined by the Legislature, a further sum of $500,000 might be annually appropriated to the canal fund from the general fund, but this sum was to be restored to the general fund as soon as practicable, and in preference to other claims. The canal fund debt was changed to a general fund debt, to be provided for by taxation, with a sinking fund.

It will be seen from these figures that the large deficiency of 1876 is already substantially overcome, and it is believed that it will fully disappear during the current fiscal year. Besides these welcome results, the prisoners have been led into habits of industry and made to suffer that portion of the penalty of the law which consists of hard labor. With these habits have come order, discipline and encouragement to lead better lives when they have suffered the punishment to which they are condemned.

The prisons are greatly overcrowded. There are in round numbers at Sing Sing one thousand six hundred, at Auburn one thousand two hundred and at Dannemora six hundred. In addition to these, there are about eight hundred State prisoners in the various penitentiaries authorized to receive them. The cost of the support of those confined in the penitentiaries is paid from the State treasury, but the prisoners are not under the supervision of the Superintendent of Prisons. The subject of erecting a new prison has been somewhat agitated. It is, in the opinion of the Superintendent, the most economical and advisable plan, now that a railroad has been built from Plattsburgh to Dannemora, to enlarge Clinton Prison to at least double its present capacity. This could probably be accomplished for one-tenth of the expense of locating and building a new prison, and without embarrassing delay. I concur in this suggestion as the most prompt, simple and economical solution of the problem.[2]

## ASYLUMS FOR THE INSANE.

It seems impossible to meet fully all the calls for the care of the insane. The unnatural excitement in all branches of business which prevailed during many years, and the severe losses and disappointments which resulted from the general collapse, added to the usual causes of mental disorders, have increased immensely the number of sufferers from nervous and brain diseases. The State has made very large expenditures to meet the demands thus made upon it. In addition to the State Asylum at Utica, built many years ago, it has erected, within the past few years, the Willard Asylum, at Ovid, the Hudson River State Hospital, at Poughkeepsie, the Homœopathic Asylum for the Insane, at Middletown, and the Buffalo Asylum, making in all five large institutions. In addition to these there are many private and local establishments; but almost every asylum, whether public or private, is filled with patients within a very short time after it is ready to receive them.

---

[2] A commission to prepare plans for an enlargement of Clinton Prison at Dannemora, was created by chapter 346, passed May 21. The commission was to make provision for the confinement of at least 1,200 prisoners at an expense not to exceed $200,000.

The amounts expended for construction upon the various asylums up to the thirtieth of December last were as follows:

| | |
|---|---|
| Utica | $1,437,559.31 |
| Willard | 1,513,664.97 |
| Poughkeepsie | 1,697,665.88 |
| Buffalo | 1,096,352.91 |
| Middletown | 629,030.41 |
| Total | $6,374,273.48 |

From the Secretary of the State Board of Charities I have received the following statement of the number and condition of the insane of this State in the various public institutions, November 30, 1878, based upon returns to the board by the respective officers of such institutions:

1. In the State Asylums for the acute insane:

| | |
|---|---|
| In the State Lunatic Asylum at Utica | 607 |
| In the Hudson River State Hospital | 232 |
| In the State Homœopathic Asylum | 146 |
| Total | 985 |

2. In asylums that provide for both acute and chronic insane, under special acts:

| | |
|---|---|
| In the New York city asylums | 2,658 |
| In the Kings County Asylum | 982 |
| In the Monroe County Asylum | 182 |
| Total | 3,822 |

3. In institutions for the chronic insane:

| | |
|---|---|
| In the Willard Asylum | 1,395 |
| In the county poor houses and county asylums | 1,903 |
| Total | 3,298 |

| | |
|---|---|
| The total number of insane persons in our institutions, public and private, November 30, 1878 | 8,771 |
| Total number November 30, 1877 | 7,921 |
| Showing an increase of | 850 |

Of the chronic insane in county poor houses and county asylums 1,054 are in counties exempt from the operation of the Willard Asylum act, under chapter 713, of the laws of 1871. This leaves 849 chronic insane in poor houses still to be provided for by the State. The returns show an increase of 179 chronic insane in the various poor houses of the State during the past year. The Willard Asylum also shows an increase of 130 in the same period. Most of these chronic insane are held in counties which thus far have failed to make adequate provision for them in expectation that the State would extend its accommodations in accordance with the act of 1865, creating the Willard Asylum and requiring them to send this class of insane to it. That institution being now filled to its capacity, the authorities of these counties generally are much embarrassed in consequence, and in some of the counties the condition of the chronic insane is truly deplorable. A part of the counties that now retain their chronic insane under the act of 1871, it is believed, would also avail themselves of State accommodations if such were provided, having been compelled, from lack of room at the Willard Asylum, to make temporary provision for them.

The Buffalo Asylum is not yet in use. An appropriation of $175,000 was made at the last session to finish and furnish it during the year. I am advised that without any further appropriation it will be completed and ready for the reception of patients before the close of the present year.

It has been necessary, owing to decay and injuries from long use, to entirely rebuild the interior of the Utica Asylum. To avoid the necessity of suspending its operation small sections of the buildings have been successively repaired without disturbing the patients in the remainder. This work has been completed in a very substantial and satisfactory manner, and no further appropriations for it are needed. In those asylums where patients are now under treatment they are receiving all the benefit which modern science can give them. All the new buildings were commenced during the insane times when it was considered meritorious to spend the people's money in the most reckless and prodigal manner, and the cost has been much larger than it should have been. It is too late to remedy that evil, but not too late to guard against its repetition.

Personal visits to the Willard Asylum and the Utica Asylum gave me a very high opinion of the excellent management in both these institutions. They are highly creditable to the State and to those entrusted with their management. The Willard Asylum is the largest, and in many respects the most important in the State. It is built in separate groups, affording every facility for classifying patients according to the peculiar phases of their insanity, and accommodates, as stated, upwards of 1,400 patients.

The apartments are all clean and in the very best order compatible with the service for which they are used, and nothing appears to be wanting which can contribute to the convenience and comfort of the inmates of such an institution. There is a farm attached to it consisting of 776 acres, worked almost wholly by the patients, who are benefited by the labor, and the products of the farm contribute largely to their support. The support and maintenance of the patients at Willard have heretofore cost at the rate of two dollars and eighty cents ($2.80) per week each, the payments for the same being made by the counties which send patients there instead of providing for them in the county poorhouses. The superintendent exhibited to me the accounts of the institution, which showed a balance of cash on hand amounting to about $35,000. This surplus had arisen from the reduction in the cost of living, and showed, that $2.80 per week was more than was actually required. The rate has since been reduced to $2.60 per week, thus relieving the counties to that extent. There is no charge upon the State for maintenance.[3]

## COUNTY JAILS AND POORHOUSES.

Many complaints have been made to me through the Prison Association and the Board of State Charities, of the wretched condition and bad management of most of the county jails and poorhouses. I am very apprehensive that most of these complaints are well founded. The jails are represented as nurseries of crime, and the poorhouses as models of inhumanity, especially in their departments for insane paupers. I am not prepared to make any specific recommendations for the prevention of the evils complained of. It is probable that the reports of the Board of State Charities and the Prison Association may bring the subject to your attention in some practical form. In any event, you are, yourselves, undoubtedly acquainted with the condition of these institutions in your respective counties, and I can safely leave the matter to your own information and good judgment, earnestly urging you to omit no efforts to remedy the evils complained of whenever you learn of their existence.[4]

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[3] The Binghamton Asylum for chronic insane, was established by chapter 280, passed May 13, which abolished the New York State Inebriate Asylum at Binghamton, and transferred its property and privileges to the new institution; which was to be managed by a board of nine trustees, to be appointed by the Governor and Senate. The act appropriated $72,500, to carry its provisions into effect, and contained details relating to the organization and administration of the new asylum.

In connection with this subject and that of the case of the chronic insane, it has been suggested that insane convicts confined in the asylum at the Auburn prison, at the expiration of their sentences, instead of being returned to the counties from which they were sent to prison, should be retained in the asylum where they are at the expense of the counties to which they belong. This would, so far, provide for one class of the insane now confined in the county houses or in the Willard Asylum.

## THE INEBRIATE ASYLUM.

From conversation with several of the leading managers of the New York State Inebriate Asylum, I learn that they consider the experiment for the reformation of inebriates, as hitherto tried in the asylum at Binghamton, a complete failure. I have long been of the same opinion. The law does not, and perhaps cannot, properly provide for the forcible arrest detention and control of inebriates. Consequently, there are no patients at the asylum, except such as consent to go there voluntarily. There is no power to restrain them of their liberty, and the institution has become practically nothing more than a hotel for the entertainment of wealthy inebriates, who remain there so long as they find it pleasant and agreeable, and when it ceases so to be they leave it without anything approaching a permanent removal of their appetite for intoxicating drinks. The institution must, therefore, be regarded as having wholly failed to accomplish the laudible purposes for which it was undertaken, and to realize the high hopes on the part of the public for its success. I recommend that no further appropriations be made towards its support for its original purpose. The building is a spacious and convenient one, with a large farm attached to it, and it may, without much expense, be changed into a very commodious asylum for the insane who are now confined in county poorhouses, and generally not well cared for, and for whom there is not sufficient room at the Willard Asylum. I understand that the Board of State Charities approve of this disposition of the building. I commend the subject to your careful consideration.[5]

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[4] The Legislature, by a concurrent resolution adopted in May, created a commission to visit and examine county jails, penitentiaries and reformatories, with reference to their management and government, and report to the next Legislature. The report was presented to the Senate on the 9th of March, 1880. [See Senate Document No. 36.]

## SOLDIERS AND SAILORS' HOME.

Some years ago an enterprise was undertaken by an association, for the purpose of establishing a home for soldiers and sailors disabled in the late war, and incapable of supporting themselves. The persons proposed to be provided for in this way are, of course, pensioners of the general government, but the small amounts received by them in the form of pensions were, in many instances, insufficient for their support. The effort to relieve them was a laudable and worthy charity. The association which undertook the work found themselves, however, unable to go on with it by means of voluntary subscriptions. At the last session of the Legislature an act was passed authorizing the transfer by the association, to the State, of the partially erected building and the real estate connected with it, in the village of Bath, in Steuben county. The act provided for the organization of a board of trustees, and for the payment of the debts of the association and the completion of the building. For all purposes, including a small amount for maintenance, an appropriation, amounting in the aggregate to $82,316, was made. The board of trustees, appointed under the act, have proceeded in accordance with it promptly and successfully, and the building is completed, and nearly, or quite, ready for the reception of the class of persons for whom it is intended. I am not advised as to whether any, or what, further appropriation will be required.[6]

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[5] **The asylum for inebriates was abolished by chapter 280, passed May 13, which act established the Binghamton Asylum for Chronic Insane. [See note 3.]**

## THE NEW CAPITOL.

An important question to be disposed of by the Legislature is whether further appropriations for the building of the New Capitol shall be made at the present session. The only necessity for rapid progress hitherto urged has been the inconvenient and insufficient accommodation of the Senate and Assembly in the old building. Ample provisions have now been made at a vast expense to overcome the difficulty complained of. All the important State offices are more conveniently and comfortably situated where they are than they ever can be in the New Capitol. The amount which has already been expended is $9,276,-

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[6] Appropriations aggregating $152,500 were made at this session for the Soldiers' Home, including maintenance and other purposes.

A concurrent resolution was adopted on the 30th of January, directing the Commissary General of Ordnance to furnish for inmates of the Soldiers' Home 500 army overcoats, which the preamble declared to be "out of date and condemned so far as use by the National Guard is concerned."

615.36, and of this sum $4,300,000 have been drawn from the taxpayers during the period of financial disaster and distress which commenced in 1873 and still continues. The question then arises whether the taxpayers ought not to be allowed some respite, and in considering this question account should be taken of the widespread dissatisfaction and sense of wrong felt by the people of the whole State at the deception practiced upon them, and the violations of law committed almost at the outset of the enterprise. In 1867 an act was passed by the Legislature, being chapter 485, of which the first section is as follows: "The sum of two hundred and fifty thousand dollars is hereby appropriated, out of any moneys in the treasury not otherwise appropriated, toward the erection of a New Capitol, authorized by chapter six hundred and forty-eight of the Laws of eighteen hundred and sixty-five, and the necessary expenses attending the same. But no part of the amount hereby appropriated shall be expended, nor shall the Capitol Commissioners incur any expense on account of the said Capitol, until a plan of the Capitol shall be adopted and approved by them, and approved by the Governor, not to cost more than four millions of dollars when completed."

In 1868 the Legislature emphatically reiterated the condition of the year before. Chapter 830 of the Laws of that year appropriated two hundred and fifty thousand dollars for the New Capitol, created a new Board of Commissioners, and further contained the following explicit language: "The said Commissioners shall review the plans which have been adopted for the New Capitol, and may change and modify the same, or adopt others in their place, as they may deem advisable and proper; provided, however, that they shall not proceed to the construction of the said New Capitol unless they shall be satisfied that the expense thereof shall not exceed, when completed, the sum of four millions of dollars."

Thus, in two successive years, the people of the State were assured that the New Capitol should not cost them to exceed four millions of dollars, and it was made a condition precedent that the Commissioners should not proceed with the work except upon such plans and specifications as would insure its completion within that sum. These acts have never been repealed or modified. They were at once violated, and, in effect, nullified for all time by the deliberate adoption of a plan under which the building could not possibly be completed for four times the amount fixed as its maximum cost, and the work has gone on until over nine millions of dollars have been expended instead of four millions, and there is no reason to expect that the building can now be completed on the scale and in the style in which it has hitherto been carried on at a less total cost than five times the four millions to which it was originally limited. About three years ago a partial change of plan was made, under the representation that it would reduce the cost, but it had little effect. It was too late. The evil lay in the illegal plan above referred to, and could not be removed without taking down the building to its foundation.

The entire eastern, western, southern and part of the northern fronts are neither enclosed or roofed. These portions of the building have long remained in this condition, without harm, and I know of no injury or inconvenience likely to result from their remaining so as long as may be desired. I recommend, therefore, that the Legislature should carefully consider: first, whether any appropriation shall be made at this session; second, whether, in the further progress of the work, a simpler, cheaper, and less ambitious style of finish ought not to be adopted. In view of the pledges and conditions of the statutes cited, that the building should not cost over four millions; in view of the fact that near ten millions have already been spent upon it, the certainty that its completion in the present florid style must cost from eight to ten millions more, and the equal certainty that when completed its accommodations for every department to be moved into it will be far inferior to those now enjoyed, is it not wise, for a short time, to take account of the scanty progress which has been made, and the enormous amount it has cost to make it, to scan the method of this vast outlay before further appropriations be made? No doubt exists in the mind of any intelligent citizen that a State Capitol, far more becoming in exterior design and internal finish than the present one, and far superior to it in convenience, could have been, or can now be, built at a cost within the limit of the four millions originally intended, and for half the money yet required to complete the present building on the proposed plan. It now, however, only remains, by frugal management, to secure the best possible use of every dollar given to it. If we concede the artistic merit claimed for the present design, it yet seems to me that in times like these the food and raiment of our people are more to them than the development of schools of art. A million dollar tax cuts deep into the shrunken resources of the people. They are ill able to pay it. Nothing can justify its levy but stern necessity. That necessity no longer exists. They are staggering under a vast load of local debt and taxation, and every dollar taken by the State lessens their power to endure these local demands. In the light of all these circumstances and the unwelcome fact that the care of this mammoth building, when completed, will annually cost a fabulous sum, I urge that all appropriations be stopped for the present, that the Legislature inform itself thoroughly as to the style and cost of the work, to the end that before voting any more millions it may be understood for what end they are expended, and whether the completion of the building cannot be secured in some less extravagant and ostentatious style.

If, however, in the judgment of the Legislature, it seems best that some appropriation be made, I recommend that it be limited to a small amount, and not made until such an examination, as I have already suggested, enables you to make it intelligently. There is no proper legal audit of these expenditures exercised by any financial officer. The Commissioners draw in round sums for their moneys. The payments of every other department of the government are subject to a rigid audit and scrutiny by the Comptroller. I know of no reason why those for the New Capitol should not be likewise treated.[7]

## THE NATIONAL GUARD.

The National Guard at present consists of seven divisions, thirteen brigades, one regiment and twelve separate troops of cavalry, one battalion and ten separate batteries of artillery, and twenty-three regiments, six battalions and thirty-one separate companies of infantry; in all comprising thirteen hundred and twenty-three commissioned officers and eighteen thousand eight hundred and eighty-five non-commissioned officers, musicians and privates, making an aggregate force of twenty thousand two hundred and eight. Several changes have been made by disbanding inefficient skeleton regiments and battalions with full complements of officers, but very few men. Instead of regiments and battalions where such organizations were not needed and were not full and efficient the policy of organizing separate companies has been pursued with the best results, and I am fully satisfied that the State militia, improperly named in the law as the National Guard, was never in so good a condition for effective service as it is at present. Fortunately the peace and order of the State have been so well maintained by the civil authorities that there has been no occasion to call upon the military for any service during the year.

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[7] Chapter 65, passed March 5, appropriated $500,000 for the New Capitol, including $340,000 for liquidating existing liabilities of the Capitol commissioners, and the commissioners were directed to use a part of the remainder for the purpose of preserving unfinished portions of the building.

The supply bill, chapter 272, appropriated $500,000 for continuing work on the New Capitol, but with the proviso that no part of it should be used unless new plans and estimates, to be procured by the Capitol commissioners, should show that the Capitol could be completed for $3,500,000 in addition to this appropriation.

The manner in which the liberal appropriations, made by the last Legislature for better equipping the force for field service, have been expended will be detailed in the Adjutant General's report. It will be found upon examination to have been judicious, and to have carried out as faithfully as practicable the objects of the several appropriations.

The service to which it was necessary to call the National Guard in 1877 disclosed its lack of suitable equipments for the field. An appropriation was made in the Supply bill at the last session to furnish the troops with the requisite articles. The amount was fixed with reference to expected receipts from the general government for arms and other materials. These receipts, however, were much less than were anticipated, consequently the appropriation proved insufficient to fully accomplish the purpose for which it was made. A further appropriation will therefore be necessary, but should be kept at the lowest practicable amount. The information as to the necessary amount will be furnished by the proper officers. I think it my duty to caution the Legislature against applications which are frequently made for appropriations to separate organizations. As the National Guard is now organized, appropriations should be so made as that the whole force may be treated impartially. Special favors shown to any particular company or regiment cause at once jealousies and discord, which are injurious to good discipline.[8]

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[8] Chapter 11, passed January 28, appropriated $200,000 for the purchase of "overcoats, blouses, blankets, haversacks, canteens and equipments" for the National Guard.

The supply bill, chapter 272, appropriated $4,000 to aid in uniforming separate companies, troops and batteries.

## COMMON SCHOOLS.

In my former messages I have given fully my views in regard to the proper scope and extent of the schools that should be maintained by general taxation. All my subsequent observation has confirmed the opinions expressed upon this subject. To the extent of giving to every child in the State a good common school education, sufficient to enable him or her to understand and perform the duties of American citizenship, and to carry on intelligently and successfully the ordinary labors of life, the common schools are and should be objects of the deepest concern to the whole community. To the few who desire and are capable of a still higher education, and who have an ambition to shine as professional men and in the arts of literature, music, painting and poetry, the door is wide open for them to win distinction in those callings. But to levy taxes upon the people for such purposes is a species of legalized robbery, and even the recipients come to know it. Their sense of justice cannot fail to condemn it; it lowers their standard of morality and helps to debauch instead of purifying public opinion. It also breeds discontent on the part of those who are educated, or attempted to be educated, to something above that for which they are fitted. It really disqualifies them for those duties and labors to which alone they are by nature adapted, so that not only great injustice but great demoralization is the result of a system which collects money by force from one man to educate the children of another man, for callings which they can never fill. The argument sometimes advanced, that this system is a benefit to the poor, is an utter fallacy. The children of the poor man generally leave the schools with a common school education, and go to work for themselves or their parents. Yet, while the poor man's children are thus at work, his little home is taxed to give to the children of others a collegiate education. Nine in ten of those educated in the so-called high schools at the public expense would far better pay their own bills than to have them paid by the people of the State. These views are so manifestly just, that I have no doubt they will ultimately prevail. Indeed, there seems to have been already a cessation of efforts to establish high schools, academies and colleges, and support them by taxation. So far as I can learn, the normal schools established in various parts of the State are, with two or three exceptions, wholly useless, and fail almost entirely to accomplish the objects for which they were established, and for which the State is annually paying large amounts of money from the treasury. I recommend an inquiry into the working of these institutions, and a discontinuance of all those which fail to accomplish the purposes of their establishment. The following is a statement of the number and condition of the common schools, and the number of pupils instructed in them during the past year. The full particulars will be found in the Annual Report of the Superintendent of Public Instruction.

### COMMON SCHOOL STATISTICS FOR THE YEAR ENDING SEPTEMBER 30, 1878.

| | |
|---|---|
| Total receipts, including balance on hand October 1, 1877 | $11,793,627.67 |
| Total expenditures | 10,626,505.69 |
| Amount paid for teachers' wages | 7,756,844.31 |
| Amount paid for school houses, repairs, furniture, etc. | 1,363,429.57 |
| Estimated value of school houses and sites. | 30,147,589.00 |

| | |
|---|---|
| Number of school houses | 11,824 |
| Number of school districts exclusive of cities | 11,270 |
| Number of teachers employed for the legal term of school | 19,948 |

| | |
|---|---|
| Number of teachers employed during any portion of the year | 30,567 |
| Number of children attending public schools | 1,032,052 |
| Number of persons attending Normal schools | 5,522 |
| Number of children of school age in private schools | 113,864 |
| Number of volumes in school district libraries | 751,534 |
| Number of persons in the State between the ages of five and twenty-one years | 1,615,256 |

## REPORTS OF CHARITABLE INSTITUTIONS.

The Board of State Charities is much embarrassed by the want of uniformity in the date to which the annual reports are made by charitable institutions aided by the State. It is very desirable, for the purpose of tabulating and comparing the expenses of these institutions, that these reports should conform to the end of the fiscal year observed by all the State officers, namely, the thirtieth of September, in each year. But some of them by the terms of their charters, others by general laws, make their reports at various dates in the course of the year, and confusion thus arises in comparing them with the reports of the State officers. At the request of the Board of State Charities, I recommend the passage of an act requiring all of the institutions referred to, to make their reports up to the thirtieth of September of the present year, and up to the same date in all succeeding years.[9]

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[9] By chapter 109, passed March 22, the fiscal year in all State asylums, hospitals, charitable and reformatory institutions was established, to begin on the first day of October, and end on the 30th of September, and the first report after the passage of the act was to be for a period beginning at the close of the last fiscal year of the particular institution, and ending on the 30th of September, 1879.

## LOCAL DEBT AND TAXATION.

Whilst the State has paid all its debts, except about eight millions of dollars, and is rapidly reducing its expenses and taxes within reasonable bounds, most of the cities, counties and towns in the State are struggling under a load of debt, large expenses, and heavy taxation. In looking over the long line of sufferers from these local burdens, it seems almost incredible that men of sense should have permitted themselves to be placed in such a condition. Of course, it never could have been done except under the influences of a false financial system, which seemed to deprive men of their reason, and of all capacity to foresee the evil which they were bringing upon themselves and their children. They played with debt, and courted taxation as if for pastime. Many towns almost buried themselves with bonds, issued for railroads which have never been built, and covered their farms with mortgages for which they have received no consideration. Now that the illusion is gone, they are deploring the misfortunes in which it has involved them. Some of them are even hinting at the dishonor of repudiation. Others are appealing for legislative interference. It seems impossible to withhold our sympathies from any of them, but it is equally impossible to discover what material aid the State can give beyond such authority, as it may be necessary to confer upon them, for making such arrangements as they may desire for the ultimate redemption of their own debts. Nothing can be done in this respect which will, in any manner, interfere with the sanctity of the contracts into which they have entered. They should understand that these contracts must be carried out in good faith by those who made them. The State can do nothing which will, in any form, amount to an assumption of these obligations, or any part of them. The first step to be taken by the localities towards their own relief, is to stop at once and finally, the making of any addition to their present indebtedness. However great it may be, they should at once resolve not to allow it to become any larger. In the next place the cities, counties and towns should insist upon a thorough reduction of their local expenses, which, like their debts, have been swollen beyond all bounds of reason during the unreasoning times that have prevailed. Sinking funds should then be established, which, with such contributions as can be made from year to year with the least possible inconvenience, will commence the reduction of the principal of the debt and wholly extinguish it within a certain period of years. In many places where the debts are large, this will seem a long and rugged path to complete relief, but it is the only one which I am able to discover or suggest. By pursuing it faithfully, the people will receive no small compensation for what they suffer in learning to reduce their own personal expenses, and in having it impressed upon them in a manner never to be forgotten, that debts, both public and private, are an unmitigated evil and should never be contracted, except under the pressure of unavoidable necessity.

## NIAGARA FALLS.

The civil jurisdiction over the Falls of Niagara, as well as the shores and waters of the Niagara river, is divided between this State and the Province of Ontario in Canada. But, in one sense, the sublime exhibition of natural power there witnessed is the property of the whole world. It is visited by tourists from all quarters of the globe, and it would seem to be incumbent upon both governments to protect such travelers from improper annoyance on either side. It is, however, well known, and a matter of universal complaint, that the most favorable points of observation around the falls are appropriated for purposes of private profit, while the shores swarm with sharpers, hucksters and peddlers, who perpetually harass all visitors. In the course of the last summer, in a casual meeting and conversation with Lord Dufferin, then Governor-General of Canada, he suggested the propriety of some steps on the part of the State of New York and the Province of Ontario to remedy these abuses which he had seen and deeply regretted. His proposition was that a sort of international park should be established, enclosing a suitable space on each side of the river, from which all the annoyances and vexations referred to should be excluded. Contemplating no attempt at landscape ornamenting in the vain hope of adding anything to the natural attractions of the falls, he thought that each government might obtain control of a sufficient area to be kept sacred to the free use of those who coming there from all parts of the world, desire to view the grand scenery without molestation. He believed that all this could be accomplished at small expense, each government of course retaining jurisdiction of its own portion of such park, but with a mutual understanding as to the general regulations to be enforced on either side. Subsequently the Governor-General called the attention of the government of Ontario to the same matter, and recommended co-operation with the State of New York in accomplishing the purpose in view. The proper course, if such a plan were deemed advisable, would undoubtedly be the appointment of commissions by both governments, to confer together as to its details. Should such a commission be appointed by the authorities of Ontario, I recommend that you provide for the appointment of a similar one to consider the subject. There can be no doubt that many persons abstain from visiting the falls in consequence of the annoyances referred to, nor can there be any reasonable doubt that the removal of these objections would largely increase the number of visitors annually.[10]

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[10] The Legislature in May adopted a concurrent resolution directing the commissioners of the State survey to "inquire, consider and report what, if any, measures it may be expedient for the State to adopt for carrying out the suggestions" contained in the Governor's annual message, respecting Niagara Falls, and they were authorized to confer "with any commissioners,

## GAME LAWS.

The game and fish laws greatly need your attention. To preserve and increase our game and fish is each year becoming more important. It would be perfectly feasible with a clear and stable statute, but is utterly impossible under the confused mass of the existing laws, the comprehension and execution of which is not within human power. The delegation to the boards of supervisors of power to establish regulations on this subject within their respective counties, is now generally conceded to have been a mistake. The supervisors usually make no regulations, and in the few cases where they have made them transgressors are, or claim to be, ignorant of their contents. Again, although the theory of the law is that the supervisors make the local game regulations the Legislature, at every session, passes numerous acts, general in form, but in many sections aimed at local and special privileges and restrictions.

Fifteen different acts of this sort passed at the last session. Before they reached the Executive chamber I received many letters from different parties urging that when the game bills came up for action some particular bill should be last signed. The reason of this anxiety was apparent when a perusal of the bills showed that several of them amended one certain section of the existing law to read as in each bill provided, so that, if all the bills were signed, each one, as it received the Executive approval, would repeal the one approved before it, and the one last

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or other authorized body, person or persons, representing the Dominion of Canada or the Province of Ontario, making a similar inquiry, or contemplating measures for a similar purpose."

Chapter 336, passed April 30, 1883, created a commission composed of five members, who were directed to acquire land at Niagara Falls for the purpose of establishing a State Reservation.

Chapter 182, of the Laws of 1885, appropriated $1,433,429.50 for the payment of awards made on acquiring land for the reservation, and chapter 286, L. 1885, provided for the government and supervision of the reservation.

Chapter 336, section 9, making final and conclusive the second report of commissioners of appraisal, was sustained in Re State Reservation (1885), 37 Hun, 537, appeal dismissed, 102 N. Y. 734.

signed would, in effect, repeal all the others. No better illustration can be given of the utter neglect and confusion which characterizes legislative dealings with this subject. I recommend the repeal of that part of chapter 482 of the Laws of 1875 which gives the supervisors control of this matter, and that, in place of the present mass of incoherent legislation for the protection of game and fish, a single, plain and complete act be passed, covering the entire statutory regulation on the subject, with penalties for its violation and provisions for its enforcement.[11]

## THE CODE.

An effort will undoubtedly be made to crowd upon your action bills adding about eighteen hundred sections to the installment of the so-called New Code, passed in 1876. This additional bill was passed in 1877 at the close of the session, and failed to receive my approval. It was again passed at the last session of the Legislature, and after mature consideration I returned it without approval. Space, of course, is inadequate to discuss the faults of this measure here. A few of them were stated in the veto message of last year. As I should regard the enactment of this bill a great misfortune to the whole State, I recommend that you refuse to pass it, and also that you repeal the thirteen chapters already upon the statute book. The objection to them is deeper than any technical criticism, and I firmly believe that if the crude and imperfect system which these bills represent be continued and completed, the result will be disastrous to our law and ruinous to litigants.[12]

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[11] By chapter 534, approved June 20, 1879, the Legislature enacted a general law concerning the preservation of moose, wild deer, birds, fish and other game, and repealed several statutes on the subject. By the act, boards of supervisors continued to possess extensive powers relative to fish and game, and might make regulations concerning these subjects.

[12] See special message April 29, 1879; also 1878, special message dated March 14, and note 10, for further information concerning the Code of Civil Procedure, *ante*, pp. 169, 182.

## LEGISLATIVE APPORTIONMENT.

I regret that it is necessary for the fourth time to remind the Legislature that an enumeration of the inhabitants of the State was made in 1875, and that the Constitution imperatively requires the Legislature at the first session after such enumeration, to reapportion the Senatorial and Assembly districts so that each shall contain, as nearly as may be, an equal number of inhabitants excluding aliens.[b] The requirement that this shall be done, is no more explicit than that it shall be just and equal when it is done. To make an unjust and unequal apportionment for the accomplishment of some other purpose than that intended by the Constitution is, of course, a very great and difficult labor. It requires expert skill in wrong doing. But to make a fair and equal apportionment calls for nothing more than common sense, an acquaintance with the plainest rules of arithmetic, and an honest disposition to do right. Yet in each year since the census was taken, the Legislature has met, gone through its session and adjourned, without making any apportionment whatever. These facts require no comment, and I make none, except to repeat the remark made in my last message referring to this subject: 'Certainly we cannot expect that the people will long continue to observe the ordinary restrictions and requirements of statute law, if their representatives who make that law utterly disregard and defy the especial mandates of the Constitution they have solemnly sworn to support.'[13]

## INSURANCE AND SAVINGS BANKS.

In a State with such immense commercial, manufacturing and mechanical interests, the business of fire, life and marine insurance is of very great importance. Its magnitude led to the conclusion that the Legislature should take charge of it. For the purpose of subjecting great corporations to the control of just and general laws, this was undoubtedly proper. But for the Legislature to undertake to administer the business, in all its minute details, was a step of more than doubtful expediency. All experience has shown that every legitimate branch of business is most successfully conducted when left to the management of those who understand it, with their hands as free from, and untrammeled by legislative interference, as practicable. The assumption that intelligent business men do not know enough to manage their own affairs, and that the Legislature should undertake the task for them, is both erroneous and mischievous. Influenced by this unsound idea the Legislature, twenty years ago, established the Insurance Department. The ostensible purpose of its establishment was to protect the public, the policy and stockholders of the insurance companies. Whilst it confined itself strictly to the accomplishment of that object, it did comparatively little harm and no good. Its whole history shows that the community would have fared much better without it than with it. People who wish to insure their property or their lives, if left to exercise their own discretion, will be more likely to select safe and well-conducted companies in which to insure, than they will if they rely upon the direction given them by an agent of the State. The intermeddling of a State official is almost invariably mischievous in its operation and results. I am informed that within the last seven years thirty life insurance companies have failed, involving a loss to citizens of this State of $36,927,000. This shows how little protection the department gives. I am, therefore, of opinion that the wisest legislation in regard to the Insurance Department would be to abolish it, and to return its few necessary powers to the Comptroller's office, whence they were taken. This step I advise, believing that it will benefit the parties interested, and must redound to the credit of the State.

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[b] Const. 1846, art. 3. §§ 4, 5.

[13] A legislative apportionment was made by chapter 208, passed April 23, 1879.

The same general rule naturally applies to the business of banking. It may be claimed that so far as savings banks are concerned, the class of people who deposit their savings with them, require some governmental guardianship. But even this is doubtful. The hosts of savings banks which have grown up as if in a night, flourished for a time, and then became insolvent, could never have gained the confidence of the poor people, whose little all was lost by their operations, if character and credit had not been given to them by the pretense that the State was the protector of their interests. In 1877 the Superintendent,* whom the State had chosen and who had served for several years as guardian of these institutions, was removed for negligence and incompetency, and almost the entire time of the very faithful and efficient deputy into whose hands the work has fallen, has been occupied in saving what he could from the ruin into which so many of the savings banks fell.

It is also a question worthy of consideration whether, if the State will not leave people and corporations to manage their own affairs in their own way, but persists in exercising a governmental control over them through such agents as it sees fit to appoint for that purpose, it ought not to be responsible to parties who suffer through the negligence or malfeasance of such agents?

I commend to your consideration such measures as will tend to a more speedy and less expensive mode of proceeding for winding up the affairs of the insurance companies and savings banks that have failed, so that parties who have suffered by them may receive, at the earliest day possible, whatever may be saved from the wrecks of such institutions.[14]

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* De Witt C. Ellis. See *ante*, p. 56.

[14] Chapter 424, approved May 30, prescribed proceedings in the closing and dissolution of savings banks.

Chapter 347, passed May 21, contained regulations intended to protect holders of life insurance policies that had lapsed after being in force three full years.

## FEDERAL INTERFERENCE AT ELECTIONS.

A significant fact, in connection with our recent election, is the organized attempt of the Federal authorities to interfere with the suffrage of our citizens. This seems to me a step upon dangerous ground. The scanty justification pleaded for it is that it is within the scope of Federal authority to supervise the election of members of Congress. In the exercise of this supervision the general government pretends to find the right of passing on the qualifications of voters at the polls, and to make arbitrary arrests in the discretion of Federal supervisors, thus preventing the person arrested from voting either for Members of Congress or State officers. But the Constitution of the United States provides that the qualifications of the electors of Representatives in Congress shall, in each State, be those requisite for electors of the most numerous branch of the State Legislature.[c] The Constitution of our own State, by virtue of which you hold your official station, declares what those qualifications are. It further casts upon you the duty of enacting laws to determine by proper proofs the persons entitled to the right of suffrage thereby established.[d] It is not fit that the Legislature of a great State should sit calmly by while its chief prerogative is torn from its grasp, nor does it become an Executive to fail of warning words when such an usurpation is attempted, as the arrest by Federal officers of the voter at the polls. In the name of the people, whose highest right is imperiled in this controversy, I protest against such an interference. I urge upon your notice the danger of permitting such proceedings to pass unrebuked. Suffrage is a people's right, and, by our organic law, its regulation is committed to the State authorities. It has never been yielded to Federal control, and a stern accountability will be put on any servant of this State who neglects to combat the dangerous precedent of Federal interference with these reserved powers of the State. Twice before has this impertinent intrusion on its jurisdiction been attempted. Twice before have able and courageous State Executives made manly protest, in which the Legislature and the people have sustained them. The danger and usurpation is not less now than then. As a question of highest moment, outweighing all party interests and temporary advantage, I earnestly press it on your attention. A prompt and fearless protest on your part will stop this effort once for all. Your silent acquiescence in the wrong will certainly induce its attempted repetition.

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[c] U. S. Const. art. 1, § 2, clause 1.

[d] Const. 1846, art. 2, § 1, am. 1874, § 4.

## THE CITY OF NEW YORK.

In each of my previous annual messages, and in the reasons given for disapproving several bills relating to the government of the city of New York, I have expressed the opinion that a new charter, which should establish a local legislature for the city, and leave the people to govern themselves there, as elsewhere, was the only practicable and complete remedy for existing evils. As yet, nothing has been done in that direction. The people there seemingly prefer to continue victims of bad legislation, rather than attempt to maintain local self-government. Great commercial enterprise and the universal struggle for wealth seem to absorb all attention, and to make men wholly indifferent to the laws which are necessary, not only for the preservation of their wealth when acquired, but also for their personal safety and comfort. To this general rule there are some honorable exceptions. But how much more suffering will be endured before the rule be changed, it is impossible to foresee. The great debt which overhangs the city, the army of useless officials and the extravagant salaries paid to them, are all due to laws which have been passed at various times by the State Legislature. Usually from one hundred to two hundred bills are introduced at each session of the Legislature, relating to the government of the city. There is no reason to doubt that a large number will be presented at the present session. To what subjects they may relate, or what provisions they may contain, it is impossible to know. Whatever they may be, they should receive the closest scrutiny at your hands. If anything can be done, within the limits of your constitutional power, for the relief of the city from the enormous salaries and taxes which the people are called upon annually to pay, it should be, and I trust will be, done. The experience of the past has shown, however, that many bills, originated ostensibly for such a purpose, are so changed and manipulated on their passage through the Legislature, by experts and men of skill, who interweave the worst provisions along with the best, that it is necessary to exercise great care and vigilance in regard to them. There is no need of expert and extraordinary skill in the preparation of an honest bill for an honest purpose. The language of such a bill will be always plain, simple and easily understood. The sinister and dishonest purpose is usually concealed under a skillful arrangement of crafty phrases. It will be a wise precaution to beware of bills which are said to be skillfully drawn. I am also of opinion that bills which are of great length and involve a variety of subjects are apt to lead to bad results. Their real meaning becomes involved, their provisions are conflicting, and the construction to be put upon them doubtful. A much better and safer method will be to pass only such bills as embrace a single object, and are clearly and plainly expressed. But in this, as in all other cases, it should be borne in mind that one of the worst evils of any community is a mass of unnecessary, conflicting, and doubtful legislative enactments. Upon some subjects the statutes in relation to the city are already so numerous, confused, and conflicting, that even the courts are unable to construe them. Whatever may be done, no addition should be made to this mass of confusion. There is now pending in the courts an action involving the constitutionality of the statute establishing the board of estimate and apportionment. I understand that the question will soon be brought before the court of last resort, and I trust the great important public interests involved in it will lead to its early and thorough consideration and final decision.[15]

### HARBOR MASTERS AND PORT WARDENS.

In the interest of commerce, I renew the suggestion of my last annual message, that the offices of Harbor Masters and Port Wardens should be abolished, and their duties devolved upon the police. A few policemen specially charged with these duties would be sufficient, and would relieve the commerce of the port from the heavy expenses now imposed for the services of a large array of Harbor Masters and Port Wardens.

### COMMISSIONERS OF EMIGRATION.

I learn from the Commissioners of Emigration that the number of emigrants arriving at the port of New York, from the first of January last to the twenty-fourth of December last was 121,288. The Commissioners further refer to their needs, and also to the bill introduced at the last session of Congress, and now pending before that body, for relief from the effects of the decision of the Supreme Court of the United States in regard to the emigration laws of this State.[e] The communication of the Commissioners will be transmitted to the Legislature for its information and for such action as may be deemed proper.

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[15] The act of 1873, chapter 779, creating a board of estimate and apportionment for the city of New York, was sustained by the Court of Appeals in Townsend v. New York (1879), 77 N. Y. 542.

A new charter for New York, called the consolidation act, was passed in 1882, chapter 410.

[e] See Henderson v. Wickham, 92 U. S. 259.

## EXCISE LAWS.

Again, as in my last annual message, I advise that you devote careful attention to the condition of our excise laws. No branch of our law needs to be so simple, concise and intelligible as this. Excise administration, especially in the city of New York, is now marked by continual broils and entanglements. The law is transgressed as often from ignorance as from design. Punishment is oftener inflicted for its accidental than intentional violation. Continual appeals are made to the Executive to relieve the errors of its working. These clumsy complications are unworthy an intelligent people. It is true that the subject of excise law presents a great social problem, but it is also true that a sensible and practical solution of it may be reached, if its discussion be approached in an impartial and unprejudiced spirit. I commend the whole matter to your reflection as one of the most important likely to be brought before you, and suggest that you substitute a clear, symmetric and complete statute for the present laws on the subject.

## RESUMPTION.

On the first day of the present year the Federal treasury announced its readiness to pay the legal-tender notes on demand in coin. There is no reason to doubt its ability to meet all demands that will be made. This brings us back, practically, to the money of the Constitution[1] and relieves us from further suffering by reason of a currency of fluctuating value. On the same day a law of this State went into effect which provides that after the first of this month all taxes shall be collected in coin, and all private contracts shall be enforced in coin. This restoration of our currency to which we have been looking forward for many years, is an event over which the country will be wise to rejoice. Since the issue of the legal tender notes, until now irredeemable, we have gone through first, the madness of a false prosperity, under the stimulus of a debased currency; and then more recently, the depression and distress which was sure to follow. The distress is not yet at an end, but there are signs that the process of cure has begun and will go steadily on. Economy in the expenditure of the people's money by their public agents, and frugality in private life, will, with the abundant production of our country, repair, by degrees, our recent waste. The readjustment of labor rendered necessary by overaction in some directions, is the most painful part of the remedial process to which Nature subjects us for our disregard of her laws; and this, unhappily, falls on a class of persons which had, originally, the least responsibility for the violation of correct economic policy and of honest principle involved in our issue of irredeemable paper money. There is also great distress among many who, having earned a small amount of capital devoted their savings to the purchase of homes, incurring debt for part of the cost at a time when property was at a false valuation. I sympathize with those who suffer from these causes, and would be glad if there were any unusual means of immediate relief. Government action cannot supply any. Relief can be worked out only by patient industry and economy. The quack remedies that have recently been proposed are worse than useless; they would increase and prolong the trouble. Were I, in my present position, to give them any sanction, I should be guilty of a violation of duty equal to that of a physician who should prescribe deadly poison to cure disease.

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[1] U. S. Const. art. 1, § 8, clause 5.

I have great confidence that, although improvement in our condition must be slow, we have entered upon a period of steadily increasing prosperity. To avoid some inconveniences, it may be necessary to so amend the State law above referred to as to make United States treasury notes and national bank notes convertible into gold coin at par receivable in payment of tolls and taxes. I commend the subject to your attention.[16]

### UNEMPLOYED LABOR — REVIVAL OF BUSINESS.

The evils which have arisen from great numbers of laborers being thrown out of employment in consequence of the depressions and disasters in most branches of business, still continue, but I am happy to believe that they are, to some extent, diminishing. That a substantial revival of business has commenced, and that, too, upon a solid foundation, there can be no reasonable doubt. The great interest which in this country underlies and supports all others is agriculture. With our immense territory, embracing every variety of soil and climate, and producing, with proper cultivation, everything necessary for the support and comfort of the human family, there is no reason why we should ever be called upon to pass through such eras of disturbances and distress as have marked the last five years. But by the enormous inflation of the currency, the fictitious increase of prices, the overtrading and overacting in all branches of manufactures, mining, railroad building and other enterprises, men were seduced from the more quiet occupation of agriculture into employments which, in their very nature, could not endure. Out of these they were thrown when the inevitable disasters came, and hence we have had, and still have, so many unemployed laborers in the country. But the number diminishes as circumstances force a readjustment of the proper fields of labor. Our primary sources of wealth, the soil, its cultivation and its products have been yielding, to the fullest extent, their fruits during the last two years, producing a very large surplus which has been and is now being moved forward over the various channels of commerce to all parts of the world. Agricultural laborers have everywhere found full employment. The transportation of their crops, and of the goods returned in place of them, has given increased employment to the vessels upon all our lakes, rivers and canals, to the trains upon our railways, and to all the laborers employed in the business of transportation. Here is the groundwork of renewed prosperity. It is going on and cannot fail to continue until legitimate business is fully revived from one end of the country to the other. All sections of the Union, north and south, east and west, are feeling alike this new and substantial business life, and all efforts to embarrass it or retard it, should be regarded and treated as hostility to the best interests of the country. At the same time there should be no misunderstanding as to what is meant by revival of business. By that phrase too many people still suppose that the excitement and wild schemes which prevailed in years gone by are to be renewed; that wages are to be doubled, prices more than doubled, and that men are to make fortunes out of nothing. This is not what is meant by a revival of business. It is not business; it is madness. A restoration of it would be simply to resume the road to the inevitable downfall and disasters from which we have been so long suffering. There is no human power which can raise the dead. There is no magic by which debts can be paid without money, nor by which individuals and corporations hopelessly insolvent can be restored to credit and prosperity. The revival of business which is desirable and which is surely coming unless the people shall again be reft of their senses, means the production of all those commodities for which our country is specially adapted, the sale and exchange of all the surplus over and above what is needed for our own consumption; the mining, manufacturing, railroad building and commercial traffic, which are fairly demanded by these avocations and by the foreign market for them, and the payment of all laborers employed in them, with honest money for honest work. As this comes on, labor will adjust itself in accordance with the demands for it, and employment in one way or another will be found for all. We shall cease to hear the cries for help. All honest men will be found able to help themselves in an honest way.

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[16] Chapter 82, passed March 11, 1879, repealed chapter 73, of the Laws of 1875, which provided for specie payments on contracts made after January 1, 1879, and which required the collection of taxes after that date "in gold, United States gold certificates, or national bank notes, which are redeemable in gold on demand."

The Legislature in January adopted a concurrent resolution, congratulating the people of the State and the country at large on the resumption of specie payments after a lapse of nearly seventeen years, and commended "such financial legislation and practical administration in the future as would preserve and maintain the sound and healthy financial condition thus happily restored."

## CONCLUSION.

I have thus made the particular suggestions in my power upon the condition of the State and the vast interests which now pass to your legislative care. In the broad field of your general action your conscience and intelligence must guide you. Your first official act is a solemn oath to support the Constitution of the United States and the Constitution of the State of New York. These are the supreme law of the land which no legislator or public officer may transgress. All acts in conflict with either of them are null and void. The State Constitution is the creation of the people establishing a government for their protection and defense as citizens of a free and independent commonwealth. Strictly obeying it, you cannot go far astray. Under it the State aims to secure fair and equal representation for the people, pure elections, an honest canvass of, and a peaceful submission to, their results, to the end that the majority may control the government; equal and exact justice to all men that neither the poverty of the poor nor the wealth of the rich may help or hinder the maintenance of their rights; rigid economy in public expenses, and the lightest possible exercise of the taxing power that labor may bear no needless burdens; an honest currency assuring stability to finance and steadiness to wages; perfect integrity and fidelity in office; a prosecution and punishment of derelict officials as prompt and energetic as that of common criminals; the protection of every man in his right to pursue his lawful calling in his own way, and to enjoy its fruit; and finally the sacred preservation of the public faith under all circumstances. It forbids all local and special legislation for private profit; all wasteful and profligate expenditure of public money, the folly of creating debts, as well as the crime of repudiating them when created. Conceding to the Federal Government all the powers expressly delegated to it, and shrinking from no sacrifice to maintain them, it yet sternly insists upon those inherent rights reserved to each free and independent State.

These are a few of the great lights given for our guidance. The functions which we exercise are committed to us as a sacred trust. The government which we control as public officers is not our own; it belongs to those who placed us here. The laws which we enact do not express our will; they are the voice of the people. The money which we handle belongs to them, and not to us. We can only take it from them for the legitimate expenses of government. More than this is robbery. Official generosity is official crime. Every needless tax cuts some comfort from a thousand homes. It means less food, less fuel, less cheer to many families.

L. ROBINSON.

## SPECIAL MESSAGES.

January 16. To the Assembly: Transmitting the number of pardons, commutations and reprieves granted during the year 1878.

January 20. To the Senate: Transmitting a resolution adopted by the capitol trustees, requesting the Legislature to grant the use of the old Assembly chamber to the ladies of Albany, for a loan exhibition for the benefit of the Albany hospital, in March. The next day a concurrent resolution was adopted granting the Chamber as requested.

January 20. To the Assembly: Transmitting the annual report of the Adjutant General.

January 21. To the Assembly: Transmitting the annual report of the Cooper Union.

January 24. To the Assembly: Transmitting the annual report of the Brigadier General, Daniel D. Wylie, Commissary General and Chief of Ordnance of the State of New York.

February 13. To the Assembly: Transmitting resolutions adopted by the Legislature of Tennessee, expressing its thanks to the people of other States for aid furnished, including " money, nurses, and physicians, in fine, everything that would tend to check the march of the destroyer " during the recent epidemic of yellow fever which prevailed in a large part of that State.

February 17. To the Senate:

**Veto of a bill entitled "An act in relation to the custody of the city and county hall in the city of Buffalo, the settlement of claims arising out of the construction thereof, and of the Erie County jail."**

" By an act passed in 1871, provision was made for the appointment of five commissioners to fix a site in the city of Buffalo for the erection of a public building to be known as the city and county hall, and a jail for Erie county. By several amendatory acts, subsequently passed, the powers of these commissioners have been extended to allow them to finish their work. Their terms of office finally expired on the 31st of December last. The present bill seeks to give to the same commissioners the ' custody, care and management of said hall and the grounds connected therewith, until the expiration of one year from the 1st day of January, 1879, and declares that they shall have and exercise the powers and perform the duties heretofore conferred upon them by law.' It further gives them the power to settle all claims against the city of Buffalo, county of Erie, or either of them, which shall arise, or have arisen, out of any transaction of said commissioners. It also gives them charge of the conduct of all suits or actions now pending, or which may hereafter be brought by or against said city, county, or either of them, founded upon any such transaction or claims. It also authorizes them to use and expend any moneys remaining in the treasury of the city of Buffalo, or county of Erie, to the credit of the building funds of said hall and jail, in the conduct of such suits.

I cannot see anything in this bill except a legislative appointment of these gentlemen to entirely new official trusts. The buildings, for the erection of which they were appointed commissioners, were long since completed. They are out of office, and have no legal connection with these buildings. The statutes, which originally conferred their powers upon them, provide that the mayor and comptroller of Buffalo and the chairman of the board of supervisors of Erie county, by virtue of their offices, shall have the care and management of these buildings. There would seem to be no need, therefore, that these commissioners should be appointed to do a work already committed to high and responsible officers of the city of Buffalo and county of Erie. This of itself would be a sufficient objection to the bill, even if the constitutional objection to a legislative appointment did not render it a nullity."[s]

The bill was not passed over the veto.

February 17. To the Assembly:

**Veto of a bill entitled "An act in relation to the police and fire commissioners of the city of Syracuse."**

"The charter of Syracuse, by a provision which has remained unchanged for the last ten years, declares that the police and fire commissioners shall be elected by the people. It secures, also, a minority representation in both these departments. This law is universally conceded to have worked well, and to have provided an able and efficient administration of police and fire matters. The annual election, by the terms of the charter, will take place tomorrow. Three large and nearly equal parties have nominated candidates, and are actively canvassing the city. Full preparations have been made for conducting the election in the usual way. After all these preparations have been completed, and within a few days of the election itself, the Legislature has passed this bill, providing that when the term of the present incumbents of the offices mentioned expire, the mayor shall, by and with the advice and consent of the common council, appoint their successors. The bill further directs the mayor to choose these successors, in every instance, from the same political party to which the retiring officer belongs.

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[s] Const. 1846, art. 10, § 2.

Aside from the general rule that it is unwise to change on the eve of an election local laws which have stood well the test of experience, two fatal objections to the proposed measure exist: First, it is an overturning of an important branch of the municipal law for no other apparent object than to avoid the probable result of an impending election. Second, if enacted, it will cast upon the mayor the dubious duty of deciding, in every case, what the political faith of the retiring officer, and the proposed successor, is, before he can make a nomination. The shifting nature of municipal parties is too well known to need comment. It is not uncommon that three, or even four, contest a city election; and a principal result of this bill, if enacted, would be to render ineligible to the offices named, the members of at least one great political party. As matter of principle, I think such an enactment unwise and improper at any time. It is especially so at the present juncture."

The bill was not passed over the veto.

February 26. To the Assembly: Transmitting a communication from the Secretary of the Navy, accompanied by a chart and proposed act. The records do not contain this communication.

March 5. To the Senate:

"Executive Chamber,
Albany, *March* 5, 1879.

"I have received, and herewith transmit to the Senate, charges duly verified against John F. Smyth, Superintendent of the Insurance Department, asking for his removal from office. The charges show that the facts upon which they are based have been clearly established in legal proceedings to which the Superintendent was a party, by proofs heretofore taken before the Senate, and now upon its records, and by official reports made by the Superintendent, one of which, recently made to the Assembly, is annexed to the charges. I have, therefore, deemed it unnecessary for me to make further inquiry for my own information, in regard to the facts alleged. I submit the charges at once, as they were presented to me, for such action as the Senate may deem just, and I again recommend the removal of the said John F. Smyth from the office of Superintendent of the Insurance Department.[17]

L. ROBINSON."

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[17] On the 12th of March, the charges preferred against Mr. Smyth by Governor Robinson in his message of the 5th, were taken up by the Senate for consideration. The Governor's message was again read, with the charges and specifications therein set forth. A resolution for the removal of Mr. Smyth as Superintendent of Insurance was then offered and rejected.

March 7. To the Senate:

**Veto of a bill entitled "An act to amend chapter 227 of the Laws of 1872, entitled 'An act to amend an act passed May 9, 1868, entitled 'An act to amend section 3 of chapter 817 of the Laws of 1866, entitled An act to lay out and construct a road over the river road in township Number 14, in the town of Johnsburgh, to the Carthage road, near the head of Long Lake in the county of Hamilton."**

"Chapter 817 of the Laws of 1866 appointed three commissioners to lay out, open and construct a highway through the counties of Warren, Essex and Hamilton, and authorized them to draw from the Comptroller, annually, all the highway taxes levied upon the non-resident lands along the line of such road, to be expended in the construction of the same. In 1868 the powers of the said commissioners were somewhat enlarged, and continued for five years. In 1872 the said act was further amended and the powers of the commissioners continued until the first of January, 1879. In 1874 a constitutional amendment was adopted forbidding the Legislature to pass any local bill 'laying out, opening, altering, working or discontinuing roads, highways or alleys.'[a] The act under consideration extends the powers of the commissioners for two years from the first of January, 1879, and provides that they shall not receive any highway taxes which were not levied prior to the first of January, 1879. But this leaves them the power and authority to receive from the Comptroller all non-resident taxes designated in the acts aforesaid, which were levied during the year 1878, but which will not be returned and allowed by the Comptroller until about the middle of the present year. This act, therefore, revives the commission whose powers expired on the first of January last, who are now out of office; and it authorizes them to receive and expend for the laying out and opening of this road all such non-resident highway taxes, when the amount of them shall be ascertained. It is, therefore, in all respects, equivalent to the passing of a new act to accomplish this purpose, and is, therefore, in direct violation of the clause in the Constitution above quoted."

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[a] Const. 1846, art. 3, § 18, added 1874.

The bill was not passed over the veto.

March 13. To the Assembly: Transmitting resolutions adopted by the Legislature of New Jersey, in respect to the commercial relations between the United States and other countries.

March 17. To the Assembly: Transmitting the annual report of the trustees of the Sailors' Snug Harbor.

March 18. To the Assembly:

**Veto of a bill entitled "An act to amend the charter of the city of Brooklyn."**

"It is an approved principle that the charter of a great city, which constitutes its organic law, should not be lightly tampered with or changed except for urgent necessity. For this reason, charter amendments for any city should only be enacted upon the clearest proof that they are required in the interest of the public welfare. I cannot find any such argument in favor of the present bill. I have no evidence that the local authorities, or the people at large, have asked for or desire the change. On the contrary, I have received many very urgent protests against it.

The charter of the city of Brooklyn provides that no alderman of the city shall hold any other office except that of notary public or commissioner of deeds, and that if any alderman, during the term for which he was chosen, shall be elected or appointed to any other office, his acceptance thereof shall vacate his seat as alderman. These provisions are eminently wise. The duties and responsibilities of the office of alderman, in so large a city as Brooklyn, are fully sufficient to monopolize the time and attention of the incumbent. The present bill, however, seeks to change the charter in such a manner that aldermen may also hold federal offices. It retains the prohibition against their holding State, county or city positions.

I can see nothing but evil in such an enactment. There is less reason to forbid their holding State offices than positions under the United States government. But the prohibition in both cases stands upon sound reason. Although it is not expressly forbidden by your State Constitution, the spirit of that instrument is fairly opposed to such a measure. It expressly forbids members of the State Legislature to hold any such concurrent office.[1] I know of no reason of the many which support this provision, which does not apply with equal force to the case of the local legislators of our large cities. To enact that a man may, at the same time, be a high federal officer or a member of Congress, and an alderman of a great city, is simply to provide that he may take the salary of both offices and neglect the duties of one. It is not possible, in the majority of cases, for a single individual to faithfully discharge the duties of a federal office and those of an alderman in any one of our large cities."

The bill was not passed over the veto.

March 28. To the Assembly:

**Veto of a bill entitled "An act to amend chapter 241 of the Laws of 1877, entitled 'An act to prevent the making and publication of false or deceptive statements in relation to the business of fire insurance.'"**

" The object of this bill is to add to the penalties imposed by the act of 1877, for making false and deceptive statements by the class of companies named in the following provision: 'It shall be the duty of the Superintendent of the Insurance Department of this State to take cognizance of the provisions of this act, and in the event of violation thereof, by any insurance company, it shall be his duty, if the company be chartered by this State, to report the same to the Attorney General for dissolution, and if it be a company incorporated by any other State or country, it shall be his duty to revoke its authority to do business in this.'' This is a dangerous power to put in the hands of any public officer. It is an excessive penalty for an offense to which the law has already affixed a proper and sufficient punishment. It vests in the Superintendent of the Insurance Department the power of annihilating the business of an insurance company for ever so slight a violation of the provisions of the act sought to be amended, and makes it substantially his right and duty to ruin every company which, in his judgment, has transgressed any part of the provisions of the act. It does not seem to me that any such arbitrary and ruinous penalty is necessary. It should not, in my judgment, be given to any department or any officer to inflict it.''

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[1] Const. 1846, art. 3, § 7.

The bill was not passed over the veto.

April 2. To the Senate:

**Veto of a bill entitled "An act to amend chapter 204 of the Laws of 1854, entitled 'An act to amend the several acts relating to the village of Lansingburgh.'"**

"The object of the bill is to provide that no person shall hold the office of trustee of said village unless property belonging to himself or his wife is assessed upon the village assessment roll for at least $500. There seems no good reason for thus limiting, by a property qualification, the eligibility of citizens to official trusts. There is certainly no argument in its favor at Lansingburgh that does not apply to the whole State. I do not think the people are ready to declare that no man shall discharge the duties of an office unless he owns assessed property of a certain value. No man who, for himself or his family, rents a house or pays for his living, can escape contribution to the support of the government and its expenses. Every man who thus contributes has a direct interest in the economical administration of public offices. To discriminate in elections for such offices against the poorer classes, upon whom very often the public burdens weigh more heavily than upon those whose names appear upon the assessment roll, is, in my judgment, unjust and unwise."*

The bill was not passed over the veto.

April 2. To the Senate:

**Veto of a bill entitled "An act to amend chapter 113 of the Laws of 1878, entitled 'An act authorizing and empowering the common council of the city of Rochester to construct a lift or hoist bridge over the Erie canal at Brown Street and Smith Street, Rochester.'"**

"The only change effected by this bill in the law of last year is to strike out the words 'providing that the bridges named shall be constructed only with the consent of the State Engineer and Superintendent of Public Works.' As these officers are charged with the maintenance and supervision of the canals and structures upon them, it seems only proper that they should have the power of supervising them. It is not wise, in my judgment, to establish a precedent for erection of bridges by localities against the judgment and protest of the canal authorities."

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* In 1845, a constitutional amendment was approved by the people, in which it was declared that "no property qualification shall be required to render a person eligible to or capable of holding any office or public trust in this State." The Constitution of 1846 did not contain any provision relating to property qualifications of officers; no such qualifications were imposed in any case, nor were they prohibited. Since that time the Legislature has in several instances imposed property qualifications on certain municipal officers. Thus, by the general village law of 1870, chapter 291, it was enacted that "no person shall be eligible as president or trustee unless owning property liable to be assessed for the expenditures of the village." This provision, applying it also to other officers, was continued in the general village law of 1897, chapter 414, section 42.

This bill was not passed over the veto.

April 2. To the Assembly:

**Veto of a bill entitled "An act reappropriating money to complete the reconstruction of the Oneida Lake canal."**

"This bill seeks to reappropriate the sum of $24,439.80, the unexpended balance of the fund for the reconstruction of the Oneida Lake canal. I am officially advised by the Superintendent of Public Works that the amount appropriated is inadequate to put the canal in working order, and that to approve this bill is simply to open the door to further appropriations of like character. He further assures me that the value of the work, if completed, would not be at all commensurate with its cost."

The bill was not passed over the veto.

April 2. To the Assembly:

**Veto of a bill entitled "An act relative to highway labor and the performance thereof."**

"The object of this bill is apparently to enable the commissioners of highways, in all the towns of the State, in their discretion, to use up, in any one year, the labor and taxation of their respective districts for the ensuing two years. In other words, to expend upon the care and maintenance of their highways in a single year, the entire resources provided by law to attain the same end through three years. It seems to me that any business man who should follow such a practice in the transaction of his own affairs would speedily meet with disaster. I cannot see why the State, in a line of work so simple and business-like, should depart from the rules accepted in the transaction of ordinary affairs. It is impossible to foresee through two or three years what annual application of labor to highways will be rendered necessary by the changes of the seasons, heavy storms and floods, the damages from which cannot be calculated in advance. The labor of every year is needed to repair the damages of every year, since the manner of its application is dependent largely on the happenings of each season."

The bill was not passed over the veto.

April 2. To the Assembly:

**Veto of a bill entitled "An act in relation to district courts in the city of New York."**

"It is sought by this act to enable the justices of the district courts in the city of New York to appoint the janitors of the buildings in which their courts are held. The charter of the city charges the department of public works with the care of these and other buildings belonging to the city, and that department has hitherto appointed the janitors. It is only proper that as the department is responsible for the care of the buildings, it should appoint their custodians. Some of the buildings in which these courts are held are not occupied exclusively by them, but are devoted to other purposes. I am apprised, moreover, that the question of the power of the justices to appoint janitors is now in litigation and pending before the Supreme Court. Of course, it is not well for legislation to interfere with proceedings before the court. The bill is also open to the constitutional objection that its title gives no indication of its purpose to amend the charter and take from the commissioner of public works the power to appoint janitors and give it to the civil justices.[1] The justices already have and exercise the power to appoint two attendants for their respective courts."

The bill was not passed over the veto.

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[1] Const. 1846, art. 3, § 16.

April 2. To the Assembly:

**Veto of a bill entitled "An act to amend chapter 440 of the Laws of 1876, entitled 'An act to amend an act entitled An act to incorporate the city of Cohoes,' passed May 19, 1869, and the acts amendatory of the same, passed March 4, 1872."**

"The principal aim of this bill is to give the recorder of the city of Cohoes the powers of a justice of the Supreme Court at chambers within the city. It is contrary to the spirit of the Constitution, in that it substantially appoints him to a new office;[k] and it is, besides, manifestly unjust that an officer elected in a small city, as a local criminal magistrate, should exercise over the persons and property of the citizens of the whole State the great powers given to the justices of the Supreme Court."

The bill was not passed over the veto.

April 15. To the Assembly:

**Veto of a bill entitled "An act to incorporate the Gouverneur Fire Company of the village of Gouverneur, St. Lawrence County."**

"The general laws of the State provide a uniform method for the organization of fire companies in villages. To incorporate a single fire company in a single village is simply to reverse the general policy of the State for the benefit of a single organization by a local and special act. It is against the spirit of our laws, and ought not, in my judgment, to be encouraged. I do not recall an instance in which such a bill has been enacted for many years, except where existing rights of property could not be otherwise protected than through the interference of the Legislature."

The bill was not passed over the veto.

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[k] Const. 1846, art. 10, § 2.

April 17. To the Assembly:

**Veto of a bill entitled "An act conferring additional powers upon the boards of supervisors of the counties of Niagara and Orleans, relative to expenses for the support of the poor."**

"This is a local and special act, giving to the boards of supervisors of Niagara and Orleans counties exclusive powers in relation to certain contracts for the benefit of the poor of those counties. I have several times heretofore disapproved bills passed for local and special purposes of this sort, on the ground that the proper remedy is a general amendment of the poor laws of the State. If special provisions are allowed for one locality, they should be for all; and it is easy to foresee that in a very short time the poor laws of the State would be in a state of utter confusion. Because it is local and special, I feel bound to disapprove this bill, without discussing the good or evil of its provisions."

The bill was not passed over the veto.

April 22. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *April* 22, 1879.

"I announce to the Legislature, with sincere regret, the death of John A. Dix, late Governor of this State. He died at his residence in New York, last evening. It seems to me appropriate that the Legislature should give some marked expression of respect for the long, faithful and honorable service of the deceased. In very early life he left his position in the national academy, at West Point, to enter the military service during the war of 1812. For many years he remained in the army, but afterwards returned to the avocations of civil life, from which he was again called into the public service, and became Adjutant General, Secretary of State, and a member of Assembly, Senator in Congress, Secretary of the Treasury, Major

General in the army during the late war, Minister to France, and Governor of this State during the years 1873 and 1874.

It is meet that more than passing notice should be given to the close of such a career as this. The example of the scholar, soldier and statesman, whose long and useful life last night reached its end, is worthy of all commemoration. Through his long and distinguished career he led his public life in purity, and kept his private character unstained by evil. The lesson of his life is to be learned, not from his discharge of any one of the great trusts committed to his care during the more than sixty years through which his public services extended, but in that steadfast faith, integrity and zeal, with which, in all his varied official positions, he labored for the public good. Such lives are all too few to be forgotten. I therefore suggest that in such becoming manner as meets the approval of the Legislature, expression be given to the universal sorrow felt by the people of this State at the loss which they have sustained by his death.''[18]

L. ROBINSON."

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[18] On receiving the message announcing the death of former Governor Dix, a concurrent resolution was adopted, providing for the appointment of a committee of five senators and nine members of the Assembly "to draft appropriate resolutions in commemoration of the noble life and eminent services of the deceased, and also to make suitable arrangements for attendance at his funeral."

The next day, the 23d, the committee reported the following resolutions which were adopted by both houses:

"WHEREAS, The Legislature has learned, with sincere sorrow, of the death of John A. Dix, late Governor of the State, and deems it fitting, in accordance with the suggestion of the message of the Governor and with the universal sense of public loss, to commemorate the lofty civic virtues and patriotic achievements of the long and illustrious life thus brought to a close in the fullness of time, not like a broken column, but like a complete work; therefore,

*Resolved*, That in the death of John A. Dix, the State loses a citizen whose enduring fame and noble character have shed a lustre upon his history. In a career as matchless in distinction as it was worthy in aspiration, he was successively chosen to serve as Adjutant General, Secretary of State, Member of Assembly, Senator in Congress, Secretary of the Treasury, Minister to France, and Governor of the State. To these varied and exalted trusts he

April 25. To the Assembly:

**Veto of a bill entitled "An act to amend chapter 330 of the Laws of 1850, entitled 'An act to reincorporate the village of Little Falls, by the name of Rockton,' passed April 10, 1850, and the several acts amendatory thereof."**

"This bill contains a provision of a class to which I have heretofore objected, to wit: That the commissioners of public grounds in Little Falls shall be selected, one from each of the political parties in the village. It is not necessary to discuss at length the unwisdom and ambiguity of this provision. It is the case in numerous municipalities of our State that three nearly equal political parties exist. New political issues are constantly arising upon which citizens differ, and the problem as to which are the two principal

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was called by the public sense of his rare gifts and conspicuous qualifications. Marking an unequaled public service of more than half a century, he filled them with eminent ability and conscientious devotion to the general welfare. He knew none but worthy aspirations. He made the public good the supreme object. His life was embellished by the graces of culture, and ennobled by the dignity of virtue. As a scholar, he achieved an honorable name in letters. As a soldier, he gave his sword to his country in two wars. As a statesman, he added the training of comprehensive study to the vigor of broad understanding; and, as was said of another illustrious American: 'Such was the wisdom of his views and the philosophy of his counsels, that to the soldier and statesman he added the character of the sage.'

*Resolved*, That the pure and fervid patriotism which imbued his statesmanship and inspired his action, shines out as the central and guiding principle of his whole career, and presents an example worthy of perpetual commemoration. In the crisis of peril he emblazoned the thrilling sentiment of the sacredness of the flag in a single electric sentence, and through all trials he made fidelity to his country paramount to all other obligations. His high title to the grateful remembrance of the Republic is that of a spotless patriot.

*Resolved*, That through his long and distinguished career, his public life was as unsullied by dishonor as his private life was unstained by wrong. In all his relations to the State and to his fellow citizens he presented a model of pure purpose, elevated aim, exalted character, and true Christian spirit.

*Resolved*, That in testimony of the public loss which the State has sustained in his death, and as a mark of respect for the memory of this soldier. scholar, and statesman, a joint committee of thirteen, consisting of five members on the part of the Senate and eight members on the part of the Assembly, be appointed by the presiding officers of the Respective Houses, to attend the funeral of the deceased."

Each house, as suggested in the resolution, appointed a committee to attend the funeral.

political parties in any city or village is liable at any day to become impossible of solution. Provisions of somewhat similar character, although less objectionable, have already given rise to doubt and dissension in various parts of the State, and I am not willing to assist in adding another to the probable causes of local strife. It is, of course, desirable to remove the administration of public trusts as far as possible from dissensions of partisan politics, but it is not practicable to attain this end by incorporating such a provision as the one in question into a statute. There is no court or tribunal which is authorized or competent to pass upon the question of a citizen's political opinions or faith, nor to determine which are the two principal political parties in any city or village. No penalty is ordained for the disobedience of the provision. It is not possible to make or enforce one. A large class of reputable citizens in every locality are very loosely allied to either party, and a very considerable number are avowedly connected with none. Such men cannot be disfranchised by law, and it is not desirable that they should be."

The bill was not passed over the veto.

April 28. To the Senate:

**Veto of a bill entitled "An act in relation to married women."** [19]

"This bill makes some changes in the provisions of the present law as to married women, which, in my opinion, are of very doubtful value. There has already been too much legislation, rather than too little, to give to married women the full benefit of the principles engrafted on the law by the acts of 1848 and subsequent years, on the subject. I think it wiser to preserve the few existing limitations which yet remain, all of which would be wiped away by this bill."

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[19] The vetoed bill authorized a married woman to enter into any engagement, transaction or contract with any other persons respecting property, the same as she might if she were unmarried. The principle of the bill was embodied in the act of 1884, chapter 381, which contained the provision that "a married woman may contract to the same extent, with like effect and same form as if unmarried, and she and her separate estate shall be liable thereon, whether such contract relates to her separate business or estate or otherwise,

The bill was not passed over the veto.

April 28. To the Senate:

**Veto of a bill entitled "An act in relation to the construction of fire insurance policies."**

"The object of this act is to provide that a lien upon real estate for labor or materials, acquired by filing a notice under the Statute for that purpose, shall not be deemed before judgment thereon an incumbrance within the meaning of an insurance policy, which provides that it shall become void if the property insured shall be, or shall become, subject to incumbrance. It seems to me that the effect of this bill, if enacted, will simply be to produce an extended litigation as to the power of the Legislature to enact a statute professing to put a construction upon a certain class of contracts to effect the actual obligation of the contract itself. Whether a mechanics' lien is or is not an incumbrance within the meaning of any insurance contract, is a fair question of construction for the courts. If it be

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and in no case shall a charge upon her separate estate be necessary." Contracts between husband and wife were excepted from the operation of the statute.

By the act of 1887, chapter 537, a husband or wife might transfer and convey property to each other directly, without the intervention of a third person.

By the act of 1892, chapter 594, the foregoing act of 1884 was amended so as to authorize a husband and wife to contract with each other, the same as with other persons, except that no contract could be made between them which would affect the marriage relation, nor relieve the husband from his liability to support his wife. Other laws have been enacted relating to the rights and privileges of married women, but not especially connected with the subject of this note.

such an incumbrance, the Legislature has no constitutional right to strike it out of the contract;[1] if it is not such an incumbrance, the act is unnecessary."

The bill was not passed over the veto.

April 28. To the Senate:

**Veto of a bill entitled "An act to amend chapter 130 of the Laws of 1842, entitled 'An act respecting elections other than for militia and town officers.'"**

"The amendment provided by this bill is a prescription that one of the two clerks to the inspectors, in the elections referred to, 'shall be of the same political party as the minority member of such board.' I have heretofore expressed myself in opposition to the class of legislation which seeks to engraft upon the statute provisions limiting any official position to persons of a particular political faith. All the uncertainty and controversy sure to arise under such provision will be inspired by this one. The peculiarity of the present one, however, is that its evils will affect every election district in the State. It is, therefore, many times worse than provisions I have heretofore disapproved of, of the same sort, which were limited to particular localities. As there is no legal mode of enforcing such direction, it should be left, and in spite of such enactment, it will be left to the sense of propriety to be exercised by every board in such matters. The rights of the minority in every election district, are now as perfectly protected as they possibly can be, and the enactment of this provision, accompanied by the uncertainty which will follow it, will render these rights less secure instead of strengthening them."

The bill was not passed over the veto.

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[1] U. S. Const. art. 1, § 10, clause 1.

April 28. To the Senate:

**Veto of a bill entitled "An act authorizing the town of Corning, in the county of Steuben, to borrow money to pay the interest upon bonds heretofore issued by said town, and to provide a sinking fund for the payment of a portion of said bonds, and to issue bonds therefor."**

"This act authorizes the supervisor of the town of Corning to borrow on the credit of the town the sum of $3,726, and to issue the bonds of the town therefor. The sum thus borrowed is to be used to pay the interest on maturing bonds of the town. The bonds to be issued under the bill are allowed to run for a term not to exceed three years. I am not willing to unite in authorizing the local authorities of any city or village to commence the evil practice of borrowing money to pay the interest on their outstanding obligations. It is not a good practice for business men to pay compound interest, and it is still worse for municipalities to make the same mistake. It is simply putting off the day of final settlement and insuring increased hardships when it comes. It is claimed in favor of this bill, that its only object is to correct a clerical error whereby the amount of the accruing interest was omitted from the annual tax levy; but if this be true, the evil could be corrected by the issue of obligations to run until the next tax levy, and certainly ought not to be the cause for issuing bonds for a term of years."

The bill was not passed over the veto.

April 28. To the Assembly:

**Veto of a bill entitled "An act conferring certain powers on the Five Points House of Industry in the city of New York."**

"This bill is hardly constitutional in that its title does not fully cover its subjects.[m] It does give certain powers to the Five Points House of Industry, but it also compels the board of estimate and apportionment of the city of New York hereafter to levy upon the city, annually, and pay over to the Five Points House of Industry, the sum of two dollars per week, for each and every orphan, half-orphan and destitute child, received and supported by said institution, the expense of whose support is not paid by private parties. The financial authorities of the city protest most warmly against the enactment of any further provision of this sort. Such provisions cause already an annual addition to the tax levy of about a million dollars, and the city is now doing as much in this line of charity as it well can. The laws already in force provide a method by which, under a commitment, any destitute child may be cared for, and it seems to me, in view of these existing provisions, the protest of the city Comptroller is well grounded.

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[m] **Const.** 1846, art. 3, § 16.

The Legislature ought not, in my judgment, to make an arbitrary direction to the local authorities of any city, prescribing the amounts which they shall pay to private local institutions. If this precedent be once well established. there will be no limit to the applications and the pressure for similar acts for every city in the State. The wise and constitutional rule is to leave such matters to the control of the local authorities who are directly responsible to the people themselves."

The bill was not passed over the veto.

April 28. To the Assembly:

**Veto of a bill entitled "An act to amend chapter 590 of the Laws of 1872, entitled 'An act to regulate processions and parades in the cities of the State of New York.'"**

"The object of this bill is to amend the general act regulating processions in the cities of New York in such way that the use of music on Sundays, forbidden to all other citizens, shall be allowed to a military or Grand Army of the Republic funeral. It seems to me unwise to grant to any class of citizens, or to any one corporation, a privilege of this sort, which is substantially exclusive.[n] If the Legislature choose to abolish the entire law forbidding such processions on the Sabbath, such action could not be deemed inconsistent, but to single out a small portion of the community and bestow upon them a privilege forbidden to others, will certainly result in bitterness, strife and evasions. Besides, the act will be equivalent to a repeal of the law, because evasions under false pretenses will be easy and constant. Nothing is more hurtful to the cause of good order than the existence of a law which invites evasion and nullification."

The bill was not passed over the veto.

April 28. To the Assembly:

**Veto of a bill entitled "An act to incorporate the Troy Public Library, and to transfer to it the use and management of the Troy Young Men's Association and the Free Reading Room Association."**

"The Constitution forbids the Legislature to pass a special act of incorporation where the object sought can be obtained under general laws.[o] That is exactly the present case. The general laws of the State providing for the incorporation of library societies are among the oldest general incorporating acts upon the statute book. In my judgment, the present corporation can, and ought to, be organized under the general statute, and not by special charter."

The bill was not passed over the veto.

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[n] Const. 1846, art. 3, § 18, added 1874, exclusive privilege.

[o] Const. 1846, art. 8, § 1.

April 28. To the Assembly:

**Veto of a bill entitled "An act conferring additional powers upon the trustees of the village of Le Roy."**

"This bill empowers the board of trustees of the village of Le Roy to provide for sprinkling a part of Main street, in their village. In view of the stringent provisions of the Constitution[p] and the laws to remove from the Legislature, as far as possible, all mere local and special legislation and to place it in the hands of the local authorities, there seems to be no doubt but that the village of Le Roy must have ample power to provide for sprinkling its own streets, if the people desire to have it done, without coming to the Legislature for the enactment of a special statute. Unless the Legislature is willing to assume the entire burden of providing local village ordinances, it ought not to enter upon the work of managing streets, and parts of streets, in any one of the many villages of the State."

The bill was not passed over the veto.

April 29. To the Senate:

**Veto of a bill entitled "An act supplemental to the Code of Civil Procedure."** [See note 12.]

"It is not necessary to recount the various steps in the history of this bill, and the bills of preceding sessions, of which it is the outcome. It was first enacted as a sort of supplement or addition to the thirteen chapters of the Code of Remedial Justice, so called, which was passed in 1876, and which, by an amendment of its title, is now known as the Code of Civil Procedure. The nine additional chapters, so called, were first passed by the Legislature in 1877, and left in my hands at the final adjournment in that year. In my annual message, transmitted to the Legislature on the first of January, 1878, I used the following language:

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[p] Const. 1846, art. 3, § 18, added 1874.

'The remainder of the proposed Code, containing 1,800 sections, was passed by the last Legislature and sent to the Executive Chamber, with more than 250 other bills, to be acted upon during the thirty days following adjournment. It was a physical impossibility to read the act which covered nearly 700 closely printed pages. The Constitution forbade its enactment after the adjournment without the written approval of the Governor. I did not feel authorized to approve an act which I could not read, and the bill, therefore, failed to become a law.'*

This conclusion as to the bill of 1877 was not reached, however, until after I had been most warmly assured by the friends of the proposed addition to the Code that its provisions were as nearly perfect as it was possible to make them, and that if any amendments were necessary they could easily be made as the necessity for them became manifest. At the session of last year, the judiciary committee of the Senate took up the discarded bill of 1877, and gave to its revision and amendment such time as they could spare from other legislative duties. They made very many amendments, alterations and corrections, and the bill as reported by them, differing considerably from the bill of 1877, was again passed and sent to me for approval. As it reached me early in the session, I was enabled to devote nearly the whole of the constitutional ten days to its careful examination.[q] I was appalled at the sweeping and almost countless changes made by the bill in the practice law of the State. Almost every landmark of the practice had been either swept away or materially mutilated. Where no change of substance appeared, the verbiage was cut, abridged or enlarged, without any apparent motive but the desire of change. In the scanty time allowed me by the

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*Ante, p. 168.

[q] Const. 1846, art. 4, § 9, am. 1874.

Constitution, I gave careful study to these vital changes in the law. At the expiration of the ten days I returned the bill to the Senate, stating some of the many defects which seemed to me to render its enactment unwise.* As matter of illustration, I made a few detailed objections and some general ones, but stated in the message of disapproval that the limits of such a document were not sufficient to specify at any length my objections to the bill. An effort was made to pass at once a concurrent resolution providing for a special joint committee of the two Houses, to revise the bill for submission to the Legislature at the present session, but the Assembly voted down the proposition. The Senate thereupon passed a resolution providing for a special committee of three to take charge of this task. That committee, after devoting considerable time and study to the subject, made a report to the Legislature, in which they specify nearly three hundred amendments, which they suppose necessary to give to the bill that perfection which it ought to have, and which I was warmly assured characterized the vetoed bill of last year. In the Senate a large number of amendments were made to the amended report, and it now reaches me differing in some three hundred and fifty respects from the shape in which it came in 1878, and still more considerably from the bill of 1877. Among other changes, the special Senate committee have reported and the Legislature adopted amendments designed to obviate nearly all the detailed exceptions taken by me last year to the specified sections of the bill. In this shape the ponderous volume has reached me, and, aided by the study of last year, and such further examination as I could give it in the brief time allowed me this year, I have sought to find reasons which would justify me in permitting it to become a law by the expiration of the ten days' limit of the Constitution. To sign it would have been utterly at variance with my conviction of right. I very deeply regret that I am forced once more to return it without approval. The general and radical faults which marked it a year ago are, in the main, still apparent. It remains true that this bill, which is to add nearly nineteen hundred sections to our practice law, very many of which are taken partly from the Code of Procedure and partly from the Revised and General Statutes of the State, makes almost universal changes in the verbiage of the sections themselves. This seems to me to have been a crowning fault of this bill from first to last. I specified it with care in the message of last year, and then used the following language, which I reproduce as expressing fully my views of the same fault in the present act:

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* For veto, see *ante*, p. 182.

'The Code of Procedure of 1848 and 1849, although in itself a model of clearness and accuracy, was fixed in meaning and established in use only at enormous expense to the people of the State. At the cost of many millions of dollars, at the expense of many substantial rights, it had become imbedded in the jurisprudence of the State. It was understood by the courts, comprehended by the lawyers, checked by the restrictions experience had placed around it, and afforded prompt and certain redress for civil wrongs. Its rules, contained in a statute of less than five hundred sections, with some well-understood provisions of the Revised Statutes, had, up to the time of its partial repeal in August last, fully covered the needs of our legal practice. It is now proposed by this bill, in addition to the one which has preceded it, to overturn this entire system, supplant a practice which we do know by another of 3,300 sections and 1,200 pages which we do not know, and plunge the whole operation of the civil law, the entire subject of the redress of grievances, into utter chaos. The constructions which have obtained for thirty years are to be uprooted. Laws of personal rights are to be injected into the rules of practice. The salutary checks which have been put upon the expenses of litigation are to be thrown off, and the staggering business of the State is to be laid under heavy contribution to interpret, at enormous expense, a new and unwieldy system of practice law.'

The only addition which I desire to make to the views I then expressed, is to intensify, if possible, the suggestions as to the danger of tampering with the language of the law. Some of the statutes which are rewritten, some of the principles which are enfolded in the new verbiage, are as old as the State itself. They have been preserved unchanged for a century. Upon them great business transactions have been founded, and their construction has been settled by the decisions of our courts through the litigations of a hundred years. In those decisions, the courts construed the language of the existing law, not the language which has now been needlessly put around it. It is idle for the Commissioners to assure the Legislature and the public that their new verbiage does not change the meaning of the statutes. The courts have always construed, and will always construe, the language of laws according to their own judgment, and when the Legislature puts new language around an old law, it takes the risk of new constructions upon the new words.

But, although the special committee of the Senate has labored over this bulky act with a zeal for which they deserve credit, and in the course of their labors have obviated some of the objections which I took last year to the measure, they have by no means removed them all. I do not now propose to make a second detailed discussion of the faults of the bill, but I may with propriety point out one of two specific objections, and say now, as I said then, that they are but examples of many others. While I cheerfully admit that in the matter of discretionary allowance, the bill is far better than that of last year, and no worse than the existing law, I still feel that the permanent incorporation of the vicious system of discretionary allowances by the courts and judges, into an act which is to be the foundation of our practice hereafter, is unwise and unjust. Under that system gross abuses have existed, and will always exist as long as it continues. The people have not forgotten the disgraceful history of certain districts in the State, in which the judiciary was a prominent instrument of injustice and crime. They have long believed, with reason, that the corruptions which then developed were largely connected with the power of largess given to the judges. And although this system has not been fully wiped away from the statute book, it ought not to be crystalized into an enduring code.

It is not right that the judge of any court should be given the power to put his hand into the pocket of one suitor and take therefrom money in his discretion to give to another. It becomes the means of disgraceful favoritism, corrupting to the bench and degrading to the bar. I cannot conscientiously approve of any bill which reenacts for all time so evil a practice.

An evil which was not contained in the bill of last year, is found at sections 2008 to 2014. These provide that a court of record, other than a justice's court, of a city, or a judge of such a court, or a justice of the Supreme Court, shall have power to issue a writ of *habeas corpus,* to bring before the court a prisoner detained in any jail or prison within this State, to testify as a witness in an action or special proceeding in the manner prescribed. Substantially, this same provision was enacted in a separate bill, avowedly to cover a special case, at the last session of the Legislature, and was returned without approval for reasons which I then stated at length.* The change made in the provision from its form of last year is so slight that what I then said is pertinent now, and I quote from the message of last year the objections then made:

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*Ante, p. 197.

'The rule which prevents persons convicted of an infamous crime from testifying in courts of justice, is as old as the foundations of our law. It was established in wisdom, and has been approved by experience. Its theory is, that a person who has been found guilty of murder, robbery, arson, rape, false swearing, and other atrocious crimes, is not worthy of belief, and that testimony thus born of infamy should not be heard to contradict the word of honest men, and that he who had criminally taken the life, or the property of one citizen, should not be allowed to swear away the rights of another. The disqualification of this law has long protected the rights of the innocent from the perjury of the guilty.

'But among the many wise and well-settled prescriptions of our law, swept away by the thirteen chapters of the new Code of Procedure which went into effect on the first of September last, this disability of the infamous was abrogated. Section 832 of that Code removes the disability, and places the convicts in all our prisons on the same level with the best men who are called as witnesses in the courts. Besides the purest of citizens, the worst of felons may now demand that his testimony be taken in every court of justice. It is not pertinent that I should discuss this innovation further than to make clear the faults of the bill herewith returned. Under the section of the Revised Statutes which this bill proposes to amend, the courts have no power to take, on *habeas corpus,* from the walls of a prison, a condemned felon during the term for which he has been sentenced, so that despite the section of the new Code which I have quoted, the courts have still no power, under the old statute, to take possession of a convict to secure his evidence. The present bill removes the disability of the courts. If it be made a law, every county and Supreme Court judge, every judge of any local court of record, may order any or all prisoners confined in prison, penitentiary, or jail, under sentence of death for murder or arson, under sentence of life imprisonment for manslaughter, rape, perjury, robbery or other crime, to be taken from their cells to the remotest limits of the State, and there be held at pleasure of the court to testify in any trivial suit between two private parties, for their own accommodation. I believe that this is not only unwise, but extremely wrong. The prisons and penitentiaries of our State contain over ten thousand convicts. At least one-half of these are persons whose liberty is dangerous. Many hundreds are under life sentences for the vilest and most brutal crimes. The effort to convey them on long journeys through all parts of the State, will inevitably lead to many escapes, and will endanger the lives of those who have them in charge, or such as may assist them. Yet, by the terms of this bill, whenever an apparent case is made, the court is bound to order such a bringing of the felon as a witness. It may take the murderer from his cell the day before his execution. It may call any number of convicts from our prisons at once. It may subject the officers of our penal institutions to all the dangers of escapes, revolts, conflicts between convict and keeper, not within the secure walls of a prison, but in public places, highways and conveyances. At the best, and even if this danger be avoided, the bringing of the vilest felons from their prison cells into court and on to the witness stand, and returning them again from the witness stand to the prison cell, cannot be regarded otherwise than as a pollution of the very temples of justice.

'I cannot imagine any necessity for such an extraordinary innovation. I have never known the due administration of justice to be impeded for the want of testimony from the prisons and penitentiaries. It is true that there are some persons in prison who ought not to be there, and who are not utterly vile and unworthy. In all such cases, where the testimony is absolutely necessary to prevent a failure of justice, the Governor has the power, and has uniformly exercised it, of granting a pardon with restoration to citizenship,[r] which enables the witness to appear upon the stand under more favorable circumstances than would surround him if he were brought from prison into court to be taken thence to prison again. In my judgment, the efficiency and purity of the administration of justice in our courts will be best promoted by leaving the law in these respects as it has stood for ages.'

The only material alteration of the provisions upon which the foregoing suggestions were made consists in a prohibition against bringing up prisoners under sentence of death, and in a limitation of the officers in whose discretion the writ may issue. The main features of the innovation remain unchanged.

It is not necessary that I go into further details to illustrate what seemed to me the shocking character of this addition to the act. I admit that by section 832 of the thirteen chapters of the existing Code of Procedure, passed in 1876, the disability of felons was removed; and that it was intended by that act, among other experiments, to do away with every disqualification of a witness arising from his conviction of felony. Although I did not approve of the wisdom of the change, and still believe such testimony to be utterly worthless, it was undoubtedly the legislative intent to experiment in its value. But I do not believe that it was ever the intent of the Legislature that the removal of the disqualification of infamy should extend so far as to be made the pretext for transporting from one part of this State to another, from its jails, its penitentiaries and its State prisons, convicts for felony, that they might be sworn during the time of their incarceration, wherever third parties might desire their testimony. For the disqualification of conviction lasts during the whole life of the felon, unless he be pardoned or restored to citizenship; and the design of section 832, in my opinion, was simply to remove this bar to the convict's evidence after he should have served his time in prison. Certainly no other impression is to be gathered from the note of the revisers appended to that section of the Code of Procedure, and the citations made by them in support of it. But be that as it may, the practice of transporting our State prisoners from one part of the State to another at the beck and call of parties in suits, before courts of every grade, will be a constant source of great evil, expense and trouble. Collusion to compass the escape of desperate convicts will certainly and often successfully result. Escapes will be frequent, and recourse will be had to these sections more for the purposes of effecting such escapes than for securing evidence. The discretion given to the justices of the Supreme Court and Superior Court of cities cannot be intelligently exercised amid the many duties which devolve upon those officers, and the result will be, that whenever a gang of criminals conspire to secure the release of one of their number through the operations of this act, it can easily be accomplished. If it is the deliberate judgment of the Legislature that the testimony of a felon, serving his time in prison, should be admitted in courts of justice, it ought to be taken by a commission within the prison walls. Certainly the spectacle of a convict in his prison garb, testifying in a court of justice against citizens of repute and integrity, will not inspire respect for the tribunals in which they appear. Again, the present bill contains an addition of thirty-six sections, covering twenty-two pages (sections 3296 to 3332), enacting an entirely new fee bill for referees, surveyors, commissioners, clerks, sheriffs, coroners, stenographers, jurors, printers, receivers, county treasurers, justices of the peace and witnesses. In many cases these fees enlarge the compensation now paid to those officers, and in some cases, at least, to an extent which seems unnecessary and extravagant. I do not go into the minute details of these provisions, because it seems to me a general principle that in these times public officers ought to be able to get along without any material increase of compensation. Nearly all classes of business now make less returns than at any time during the past ten years, and it does not seem that the compensation of public officials calls for an increase, even if it be not reduced.

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[r] Const. 1846, art. 4, § 5.

But it is not my intention to specify matters of detail, and I only instance the two objections stated, because they have been added to the bill since the session of 1878, and were not discussed in the message of last year. The circumstances under which this bill has been passed, and the fact that it has necessarily been considered in connection with the so-called Civil Code, which is returned simultaneously without my approval, renders some suggestions proper not usually conveyed in such a message as this. I have been almost formally given to understand that the enactment of this bill, and the enactment of the so-called Civil Code, which closely followed it, are the result of an indefinite sort of compact or bargain between the rival codifying forces, which have so long distorted, distracted, and disturbed the legislative business of the State. To give the origin, the history, and the results of the codification of our laws, is to set forth a constitutional provision calling for their collection and arrangement, and a long, bitter, and, at times, personal contest over two different revisions, and finally to exhibit a so-called compromise, by which the inventions and alterations of both parties are hastily precipitated upon the long-suffering people of the State in a confused mass.

It is not possible, under the circumstances, that the Legislature should know what either of these bills contains. Eleven hundred closely-printed pages of law have been thrown upon them, and yet neither courts nor lawyers, legislators nor people, know what they contain. To my mind, this is simply a disaster to the people of the State. A most careful comparison of the Revised Statutes, and the general statutes with the enactments of this bill, convince me thoroughly that the laws in their present shape and language are far better, more intelligible, and more conducive to a fair administration of justice than they could be under the arrangement, and in the language with which these two great bills have clothed them. And whatever may have been the conditions or arrangements of the compact to which I have alluded, I cannot find in the bills which have resulted from it any advantage which indicates that the people of the State ought to be a party to it. I have no right to indorse a traffic in our entire system of law. To approve these new and revolutionary volumes of substantive and remedial law, would be to bind a grievous burden upon the already overweighted debtor class of our community.

The expense of construction, which its doubt and uncertainty would entail, would eventually fall as a heavy tax upon the whole business community. I am not willing to stand, in any sense, responsible for the evils which it is my firm conviction their approval would entail."

The bill was not passed over the veto.

April 29. To the Senate:

**Veto of a bill entitled "The Civil Code of the State of New York."**

"It is with great regret that I find myself unable to approve this measure. There is much in its arrangement and language which commends it to general approval, but it makes innovations upon the existing law which, in my judgment, were not contemplated in the constitutional provision for the codification of the law,[a] and which the Legislature would not have adopted had it examined the bill minutely. This act, containing nearly four hundred closely printed pages and openly professing to be a collation and declaration of nearly the entire law of the State, covering the vast interests of personal rights, the domestic relation, and real and personal property, has been hurried through both houses of the Legislature within two hours of a single day, and it comes to me for approval with more than a hinted arrangement that it is to stand, or fall, with the voluminous and ill-assorted Code of Procedure. I have studied as intensely as I could the features of this bill. Among them I find several which I cannot approve, and which I am sure neither the Legislature nor the people would consent to enact understandingly. I specify a few of these as objections to its enactment while they remain imbedded in it.

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[a] Const. 1846, art. 1, § 17.

Section 78 abolishes the wife's right of dower, a provision which has been made for the wife out of the husband's property almost from time immemorial. It is among the earliest principles of the law, and has been the cornerstone of the marriage relation ever since the wife has had a standing in the law. It has been at all times the one security held by the wife against any design on the part of the husband or his creditors, to defraud her of her rightful share in her husband's accumulations. Now, by a stroke of the pen, in a Code passed without a reading, this ancient and salutary provision is dashed out of the law of the State. I cannot believe that the Legislature intended to do this thing. I do not believe the people approve it. The reasons upon which the dower right of a wife is founded, are not mere traditions. It is inherent justice that she, who has labored with her husband to accumulate and care for a property, should have a lien upon it, which he, or his sole creditors, could not take from her without her consent. By common agreement the extent of this right has been a third interest, and I have yet to know of any opposition among our people to the continued existence of this feature of the law.

Another innovation is contained in the chapter upon adoption, in section 114, and is to this effect: ‘The child, when adopted, takes the family name of the person adopting; and the two thenceforth sustain towards each other the legal relation of parent and child, and have all the rights and are subject to all the duties of that relation.’ Under this section, the adopted child would inherit to the exclusion of relatives of the blood who were one degree more remote in consanguinity. In other words, the adopted child, though he may have been in the family but a day upon the death of the foster parent intestate, will take the entire property of that parent, to the exclusion of wife, father, mother, brother or sister. I do not think the Legislature intended to engraft such a provision upon the law, and it certainly seems to me an unwise one. Under it, adoption would become very rare, or injustice to kindred very common.

The Code Napoleon, from which this law of adoption seems borrowed, is careful to throw many restrictions and limitations around it. For example, it forbids it to any one under fifty years old, or who has children. It requires ordinarily the adopted to have received the uninterrupted care and assistance of the adopter for six years. It excludes the adopted from succession to the property of relations of the adopter, etc. None of these precautions appear with regard to the adoption authorized by this Code.

In sections 754, 755, and 756, the attempt to fix the definition of ‘fraud’ by statute would be unfortunate, even if happy in execution. But here such is not the case. Intent to deceive has been always regarded as an indispensable evidence of fraud. But here we have a positive assertion by any one, of that which he believes to be true, declared to be a fraud, if it turns out not to be true in fact, if the assertion is made in a manner not warranted by the information of the person making it. Thus, mere passive suppression is declared a fraud, as is a promise made without intent to perform. The confusion likely to arise from such an insertion in the common rules as to frauds, need not be suggested.

Section 621, in copying the Revised Statutes confirming the title of a purchaser from the heir after four years from the devisor's death, as against any devisee of the land, leaves out the just protection to the devisee contained in the Revised Statutes when he is a minor, insane, imprisoned, or out of the State during the four years, and the will is concealed by the heir.

The rule of descent, laid down in section 658, is a radical change from the existing one, in that the husband or wife, in the cases specified, succeeds absolutely to the whole property, to the exclusion of the blood of the decedent, and irrespective of the source from which the property came to him or her. Even in the case of father, mother, brother, or sister, the change, so-called, in their favor, takes effect only when the value, after deducting the charge, exceeds ten thousand dollars. Such a change in the law of descent is without precedent, and must often work injustice. The present law of inheritance leaves nothing to be desired in the wisdom and justice of its provisions. I do not believe this mutilation of it is desired, or would be approved. Section 666, *et seq.*, makes substantially the same change as to personal property.

By the third subdivision of section 710, as characterized by section 706, a dangerous novelty is introduced as to creditors who may be abroad or absent from their residence for good reasons, and whose 'obligations' may be extinguished by the mere offer of performance at their residence, and without their knowledge, in their absence.

It is not my design to specify in detail all these changes. It seems to me dangerous to sanction the introduction of new terms in the oldest branches of the law, as, for instance, has been done in the law of powers and of real property. A codification such as this, containing no radical departures from the existing law, would, I believe, in time, work benefit to our people; but it does not accord with safety to put upon the people so great an enactment which contains, in very many chapters, abrupt substitutions of new principles, new terms and new expressions, for those which have stood the test of experience and construction. Did the limits of space permit, I might adduce other examples and illustrations similar to the foregoing ones, but I deem it unnecessary.

These innovations seem to me to prevent an approval consistently with a faithful discharge of my duty. Such changes ought not rashly to be made in the fundamental law of our rights and relations. There is very much in this bill which, if enacted, would conduce to the simplification of our law, and thus to the welfare of our people. But I cannot believe it my duty to approve a bill containing the alterations in substance, in form, and in expression, which I fully believe, in connection with the clumsy Code of Civil Procedure, would plunge our law into more direful confusion than that which now embarrasses it. This bill is not a revision of the statutes; it is a new system of law for the government of the State. It is in theory, at least, to emanate from the people. Before it shall be enacted into a law, the people should at least have some understanding and comprehension of what it contains. It is said that its defects may be remedied by the next Legislature. It appears to me far wiser that its defects should be taken out before it is enacted into a law. It is not, by its terms, to go into effect until the first of May, 1880. No time, therefore, will be lost by leaving it for the consideration of the people until the next Legislature, by which its defects may be cured before its enactment takes place."

The bill was not passed over the veto.

April 30. To the Assembly: Transmitting a communication from the acting Chief of Engineers of the United States, together with two maps, containing the report of the board for the revision of the pier and bulkhead lines of the harbor of New York. [For communication, see Assembly Document No. 138.]

May 5. To the Senate:

**Veto of a bill entitled "An act to amend chapter 123 of the Laws of 1854, entitled 'An act to promote medical science.'"[20]**

" The last clause of the first section of the act amended is, by this bill, apparently left unfinished and without meaning. I suppose this to be the result of a clerical error, but it is so serious as to forbid the approval of the bill."

May 5. To the Assembly:

**Veto of a bill entitled "An act to amend chapter 418 of the laws of 1878, entitled 'An act to improve Steinway avenue, Long Island City.'"**

" The principal provision of this bill is that the improvement commissioners appointed by the act of last year, may, in their discretion, pay any award for damages made to any party hereunder, in full, instead of the excess only, of such award, over and above the assessment, if any, for benefit and advantage, to such party as now prescribed by law.

The change thus made is not desirable in my opinion in any case where benefits and damages are assessed, and it is far better that the awards and assessments should be settled up in the usual way than by this special enactment to prescribe a different course, which may result in putting upon the city a considerable amount of the property assessed."

The bill was not passed over the veto.

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[20] This bill relating to the promotion of medical science was not passed over the veto, but another bill on the same subject was passed, and became a law, chapter 460, on the 3d of June, 1879.

May 8. To the Senate:

**Veto of a bill entitled "An act in relation to the public buildings and grounds belonging to Erie County, and the city of Buffalo."**

"The statutes authorizing the erection of the buildings mentioned in this bill, also provided that, when completed, they should be turned over to the mayor and comptroller of the city of Buffalo, and the chairman of the board of supervisors of Erie county, who were designated as a commission to care for the buildings. Early in the present session an act was passed by which it was sought to continue, in the commission created to erect the buildings, authority for their superintendence and control after their completion. That bill was disapproved for reasons which seemed to me imperative, and which need not be recounted here. It is now sought by the present bill to take the control of the buildings from the commission provided by the existing laws and to vest it in a board of six trustees, to be appointed by the Superior Court of the city of Buffalo in the manner prescribed in the bill.

There are several weighty objections to the enactment of this measure. It is not proper, in my judgment, that the justices of a city court of Buffalo shall be given exclusive authority to appoint the custodians of a public building which has been erected with moneys taxed from the people of the entire county of Erie. That part of the people of Erie county living outside the limits of Buffalo are thus denied all voice and control of their own property. Again, it is unwise, as a matter of principle, to bestow upon the justices of a court patronage of the sort granted by this bill. They are selected for other purposes, and it is unwise to give them powers and duties entirely inconsistent with the functions of the judiciary. It is also true that the original statutes have adjusted the responsibility of caring for this property as equitably as is apparently possible.

The mayor and comptroller of Buffalo are the most responsible officers in its government, and fairly represent the property which the city holds in the buildings, while the chairman of the board of supervisors is the county officer whose appointment to this commission is most appropriate, as representing the people of the whole county. While these arguments are not the only ones which might be urged against the passage of this measure, they abundantly justify its disapproval.''

The bill was not passed over the veto.

May 8. To the Senate:

**Veto of a bill entitled "An act to incorporate the United States Trade Mark Association."**

"The object of this bill, as stated in its first section, is to incorporate certain parties, under the name specified, 'for the purpose of promoting the rights of owners of trade-marks and kindred property, of securing useful legislation and treaties in regard thereto, and of giving aid and encouragement to all efforts for the advancement and observance of trade-mark rights, and of the rights to kindred property.' The incorporation of a society to secure legislation is new and not desirable. The laws of the State and nation provide for protecting the trade-mark rights of parties who own them, and it is not necessary to incorporate a society for that purpose. The Legislature will undoubtedly pass such acts as are proper without the assistance of a society, and the courts will dispense justice to trade-mark owners without any interference from any such source. If there is any legitimate object to be gained by such a corporation, they can incorporate under the general law. In its present form, it seems to be simply the organization of a society to lobby and to litigate.''

The bill was not passed over the veto.

May 8. To the Assembly:

**Veto of a bill entitled "An act to further provide for the better collection of county taxes in the city of Buffalo."**

"This bill delegates to the treasurer of Erie county the right to extend the time for the return of the tax warrant from the collector of the city of Buffalo, in case the collector is unable to collect all the taxes on any roll delivered to him for collection within the time fixed. It is open to two objections. First, that it commits to the treasurer of Erie county a power which he ought not to have; and, second, that it is to take effect only upon a condition, namely, the inability of the collector to secure payment of all the taxes upon his roll. Either reason is sufficient for its disapproval. An additional objection which might be urged is, that the probable effect of the bill would be to discharge the sureties of the collector, the extension of time being an interference with their contracts."*

The bill was not passed over the veto.

May 8. To the Assembly:

**Veto of a bill entitled "An act to provide for the appointment of a person to perform clerical duties in the supreme court in the county of Erie."**

"This bill seeks to authorize the justices of the Supreme Court residing in Erie county, to appoint, and at pleasure remove, a special clerk of the Supreme Court for that county. The Constitution, article 6, section 20, declares that the 'clerks of the several counties shall be clerks of the Supreme Court, with such powers and duties as shall be prescribed by law.' In the light of this express provision, it is not possible for the Legislature to delegate to any other officer the powers there given to the clerks of

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U. S. Const., art. 1, § 10.

counties. If it be said that the office proposed to be created by this bill is that of a deputy to the county clerk, and therefore proper, it is a complete answer to say that a deputy clerk is a county officer, and under the Constitution must either be elected by the people or appointed by some county authority.[t] The law now wisely commits the appointment of deputies to the county clerks throughout the State. The Legislature have not the power to change it, as in this bill provided for, by committing the designation to an officer elected for a judicial district. This bill is an illustration of the evils which grow out of a single improper example. A bill of somewhat similar character in relation to the county of Kings, although less openly objectionable, was passed at the last session of the Legislature, but evidently without any consideration of the constitutional question involved in it. The act is probably void, as this certainly would be, if approved."

The bill was not passed over the veto.

May 8. To the Assembly:

**Veto of a bill entitled "An act to confirm the reorganization of the First Wesleyan Methodist Church of Chazy, and to legalize the title to certain lands in said corporation."**

"The most elaborate and careful provisions are contained in the general laws of the State for the organization of church corporations. This bill provides for the organization of a church by special charter, and is therefore improper under section 1 of article 8 of the Constitution, which forbids the Legislature to pass a special act of incorporation, where the object sought can be secured under general laws."

The bill was not passed over the veto.

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[t] Const. 1846, art. 10, § 2.

May 8. To the Assembly:

**Veto of a bill entitled "An act to declare Black creek, in the county of Jefferson, a public highway."**

"This bill is unconstitutional, in that it is a local and special act opening a public highway in direct contravention of the provisions of the eighteenth section of the third article of the Constitution."

The bill was not passed over the veto.

May 9. To the Assembly:

**Veto of the following items in a bill entitled "An act making an appropriation to pay the expenses of the collection of tolls, superintendence, ordinary repairs and maintenance of the canals for the fiscal year commencing on the first day of October, 1879, and to provide for a contingent deficiency in the revenues for the calendar year 1879, and making further appropriations out of any unexpended moneys in the treasury to the credit of the fund for extraordinary repairs."**

"'For clearing out and excavating the bottom and repairing the banks, and for further deepening the channel at such points as may be deemed necessary by the State Engineer and Surveyor, Tonawanda feeder to the Erie canal, in the county of Orleans, the sum of $6,000, or so much thereof as may be necessary.'

This item is objected to and not approved.

In 1874–6, the people adopted, by the overwhelming majority of nearly half a million, an amendment to the Constitution providing for the appointment of a Superintendent of Public Works.[u] The very first declaration of the Constitution as to the purpose of this office, is contained in the express provision that 'he shall be charged with the execution of all laws relating to the repair and navigation of the canals, and also of those relating to the construction and improvement of the canals, except so far as the execution of the laws relating to such construction or improvement shall be confided to the State Engineer and Surveyor.' The people intended, by this amendment, to vest in the newly created office the exclusive control of the repairs, navigation and management of the canals. They had become so weary of the ceaseless plunder, corruption and waste of the old system, that they declared in the most emphatic way possible their determination to be rid of it forever, and to put beyond the power of the Legislature itself any return to it. At the same time, the people adopted another amendment to the Constitution by which it is declared that the expenditures for collections, superintendence, ordinary and extraordinary repairs on the canals retained by the Constitution, shall not exceed in any year their gross receipts for the previous year.[v] It is not possible under these two provisions to run the canals except by leaving the superintendent as free as possible to administer the system upon the basis intended by the Constitution. To restrict him by unnecessary legislation, to squander the funds upon which he must depend for running expenses, to burden the canals with costly and needless repairs, improvements and additions, is to incur the constant danger of a stoppage of the canals in the middle of a season. For, by the continued reduction of the tolls, the revenue is now become so small that it barely suffices to meet the wants of an economical management, and provide the small surplus needed to guard against breaks, or other accidents, and make the absolutely essential renewals of structures. Despite many discouragements and difficulties, the present superintendent has managed to reduce his expenses to a point which is believed to be almost the minimum of outlay. He has thus brought the amount expended within the limits of the canal revenues, but it must be remembered that he has encountered none of those disasters by accident, or the elements, which might at any time have made heavy drafts upon his slender surplus for unexpected repairs. It is not possible that this danger, always imminent, should be entirely avoided in the future. In the application of the revenues of the canals, it is necessary to keep these facts constantly in mind. If we are to avoid the danger of a sudden failure of money with which to run the canals, consideration must be taken of the principles to which I have alluded. In the whole make up of the present bill, these circumstances seem to have been utterly ignored. Not only was the total amount reported by the superintendent as necessary for ordinary repairs cut down, but I find that very many appropriations for extra work, new bridges, sluices, dams, sewers, aprons and dredging have been put in, aggregating nearly $150,000. So large were the drafts made for this sort of expenditure that it was not possible to make them all, and, at the same time, give to the superintendent the amount he had estimated as necessary for ordinary repairs without exceeding the limit fixed by the Constitution. The extraordinary conclusion was therefore reached of deducting from the total revenues the amount desired for these extra and generally needless investments, and appropriating to the superintendent the balance, thus disposing of every cent of the revenue, and leaving the operation of the canals liable to be stopped for the season at any time when a serious break should make unusual demands upon the available resources.

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[u] Const. 1846, art. 5, § 3, am. 1876.

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[v] Const. 1846, art. 7, § 6, am. 1874.

It may, besides, be generally said that the superintendent is, by the Constitution, charged with the care and maintenance of all the hundreds of bridges on the line of the canal, and the present bill appropriating to a few favored bridges and other objects every cent of the moneys available for construction and repairs, leaves the superintendent without a dollar to apply to the most necessary repairs of other bridges or structures, all of which are liable at any time to require them.

These general suggestions apply to the foregoing item and to very many of those to which I wish to object in this bill, and I have therefore grouped them for ready reference in regard to the succeeding appropriations. The superintendent has full power in his discretion to make every needed repair specially provided by this bill, if the condition of the revenues will permit.

'For the construction or rebuilding a bridge across the Glens Falls feeder, it being the first bridge west of Glen street, in Glens Falls, the sum of $450, or so much thereof as may be necessary; to be paid by the Auditor out of any unexpended moneys in the treasury to the credit of the fund for extraordinary repairs.'

This item is objected to and not approved for the reasons above stated.

'For the construction of an iron road bridge over the Champlain canal at Ship street, in the city of Cohoes, the sum of $3,000, or so much thereof as may be necessary.'

This item is objected to and not approved for the reasons first above stated. I have heretofore disapproved the same item.

'For building a bridge across a certain creek which empties into the canal near the cemetery at Waterford, the sum of $2,000, or so much thereof as may be necessary.'

This item is objected to and not approved for the reasons first above stated, and for the further reason that it is not a bridge over the canal.

'For constructing a bridge over the Erie canal, in Tonawanda, where Delaware street, in Erie county, and Main street, in Niagara county, intersect the canal, the sum of $12,000, or so much thereof as may be necessary.'

This item is objected to and not approved for the reasons first above stated. It was disapproved last year for similar reasons.

'For constructing a bridge across the Erie canal at Magnolia street, in the village of Geddes, in all respects according to the plans and specifications furnished and approved by the State Engineer and Surveyor, the sum of $6,000, or so much thereof as may be necessary.'

This item is objected to and not approved for the reasons first above stated.

'For repairing the stop-gate at the mouth of the Genesee river feeder, at Rochester, and draining said feeder for sanitary purposes, $1,400, or so much thereof as may be necessary; to be expended under the direction of the State Engineer and Surveyor.'

This item is objected to and not approved for the reasons first above stated, and for the special reason that, as the Constitution commits repairs to the Superintendent of Public Works, the Legislature has no power to commit them to the State Engineer and Surveyor. The same item was disapproved last year.

'For constructing a bridge across the Erie canal at Lyell street, in the city of Rochester, according to plans and specifications approved by the State Engineer and Surveyor, $4,000, or so much thereof as may be necessary; said bridge to be built in place of the present structure over the canal at the same point.'

This item is objected to and not approved for the reasons first above stated, and for the further reason that I am officially advised by the canal authorities that the present bridge at this point is in good condition and that there is no present need of replacing it.

'For constructing a bridge across the Black river at Carthage, Jefferson county, on the site of the present bridge, under the direction of the State Engineer and Surveyor, $5,000, or so much thereof as may be necessary.'

This item is objected to and not approved for the reasons first above stated, and for the further reason that the present structure at this point can easily be repaired and should be. A new bridge is not needed and could not be constructed for twice the sum appropriated. The Superintendent of Public Works has abundant power to make the repairs necessary to put the bridge in good condition. This can be done at one-fifth the cost of a new bridge without special provision of law. Under the language of this appropriation, however, nothing but a new bridge could be built, as the Legislature have no power to commit repairs to the direction of the State Engineer, and have explicitly ordered a new one.

'For the cost of constructing a lift bridge across the Erie canal on Mill street, in the city of Lockport, and for the removal of the masonry embankment and present bridge, and for furnishing the motor power, to be run by water, the sum of $7,500, or so much thereof as may be necessary.'

This item is objected to and not approved for the reasons first above stated, and for the further reason that I am officially advised by the canal authorities that there is a good bridge now standing at this point, and that there is no occasion to change it.

'For building bridges across the State ditch at the points where the same crosses Oliver and Foundry streets, in the village of North Tonawanda, the sum of $2,000, or so much thereof as may be necessary.'

This item is objected to and not approved, for the reasons first above stated.

'For drainage of leakage water through the dyke or bank on the north side of Tonawanda creek, in the village of Tonawanda, occasioned by the construction of the dam across said creek, by ditch, culvert or sluice, in such manner as may be deemed best by the Superintendent of Public Works, the sum of $400, or so much thereof as may be necessary.'

This item is objected to and not approved for the reasons first above stated.

'For opening, straightening and cleaning out the channel of the Eighteen mile creek which carries off the surplus waters of the Erie canal by culvert and waste weir, near Maybee's, in the town of Royalton, Niagara county, the sum of $3,000, or so much thereof as may be necessary.

This item is objected to and not approved for the reasons first above stated.

'For retaining walls and to complete the approaches to Catharine street bridge, in the city of Syracuse, the sum of $3,000, or so much thereof as may be necessary.'

This item is objected to and not approved for the reasons first above stated.

'For building a board or rail fence on the berme bank of the Erie canal, from the point where the Marcellus bridge crosses the canal to the point where Freeman's bridge crosses the canal in the city of Schenectady, the sum of $150, or so much thereof as may be necessary.'

This item is objected to and not approved for the reasons first above stated.

'For building a board fence on the berme bank of the Erie canal, from the point where the Grand Island Ferry bridge crosses the Erie canal in the town of Tonawanda, southerly the distance of two miles, the sum of $500, or so much thereof as may be necessary.'

This item is objected to and not approved for the reasons first above stated.

For the construction of a dam across the Moose river, at the old Brown Tract forge, the sum of $18,000, or so much thereof as may be necessary; and the State Engineer and Surveyor is hereby authorized to submit plans and estimates to the Canal Board, who are hereby empowered and directed to order the building of such dam, and to take and appropriate any lands not released by the provisions of chapter 850 of the Laws of 1872, and of chapter 399 of the Laws of 1874, which may be required for the purpose of building such dam, and of bringing the proposed reservoir into successful use.'

This item is objected to and not approved for the reason that it commits the work to the Canal Board. Under the section of the Constitution above quoted, creating the office of Superintendent of Public Works, it is no longer within the power of the Legislature to charge the Canal Board with the execution of any work for repairs, navigation, construction or improvement of the canals.[w] They would, therefore, have no authority to spend the money if the item were approved.

'For the purpose of extending sewerage under the Erie canal and to Squaw Island, at Black Rock, in the city of Buffalo, to be expended by the State Engineer and Surveyor, in accordance with the plans and specifications prepared by him, the sum of $25,000, or so much thereof as may be necessary.'

This item is objected to and not approved for the reasons first above stated, and for the further reason that the State is neither legally, equitably nor morally bound to construct sewers for any city or village. It purchased the right of way for the canal and paid heavily for it, before its construction, more than fifty years ago. It is no more proper to charge it with the expense of constructing a sewer under the canal, or under a canal basin, than to charge it with like expense for constructing a trunk sewer under any other piece of its property. Structures for sewerage are, and should be, proper subjects for local construction and regulation.

'For repairing the dams and completing the aprons of the same, connected with the Oswego canal, on the Oswego river, the sum of $20,000, or so much thereof as may be necessary.'

This item is objected to and not approved for the reasons first above stated.

'For cleaning out and reopening ditches between the Tonawanda creek and the eleven mile creek in the town of

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[w] Const. 1846, art. 5, § 3, am. 1876.

Amherst, in Erie county, the said ditches having been constructed under the provisions of chapter 880 of the Laws of 1868, the sum of $5,000, or so much thereof as may be necessary.'

This item is objected to, and not approved, for the reasons first above stated.

'For the construction of a lift, swing or draw bridge over the Oswego canal, in the city of Syracuse, on Salina street, at its intersection with Bridge street, in place of the bridge now over said canal at that point, which was authorized by chapter 382 of the Laws of 1874, the sum of $12,000, or so much thereof as may be necessary; to be paid by the Auditor out of any unexpended moneys in the treasury to the credit of the fund for extraordinary repairs.'

This item is objected to and not approved for the reasons first above stated. It was disapproved for like reasons last year.

'For the construction of a draw in the bridge over the navigable channel of the Oneida river at Brewerton, between the counties of Oswego and Onondaga, the sum of $7,500, or so much thereof as may be necessary; to be paid by the Auditor out of any unexpended moneys in the treasury to the credit of the fund for extraordinary repairs.'

This item is objected to, and not approved, for the reasons first above stated. It was disapproved last year for like reasons.

'For the repair of the dock built by the State in 1875, on the east bank of the Hudson river, in the south part of the village of Lansingburgh, and in extending the same southerly so as to more fully protect said bank from the current of the third sprout of the Mohawk river, $4,500, or so much thereof as may be necessary; to be expended under the direction of the Canal Board.'

This item is objected to, and not approved, for the reason that its expenditure is committed to the Canal Board. As I have already stated, to charge them with such an expenditure is not within the power of the Legislature, and the appropriation would not be effective if approved."

May 9. To the Assembly:

**Veto of a bill entitled "An act in relation to the auditing of expenses for the support of the county poor, and the purchase of supplies in the counties of Clinton, Niagara and Orleans."**

" Many of the provisions contained in this bill are wise, but the arguments advanced in its favor are not sufficient to overbalance the objection that it is a local and special act interfering with matters which should be the subject of a general statute.

Nothing can be gained by enacting a series of differing special laws for the care of the poor for the several counties of the State. Utter confusion would result in a branch of the law which ought, of all others, to be the most uniform and simple.

A wise and well digested general law on this subject is much needed, and only in the discussion and enactment of such a one can the deliberate judgment of the Legislature be obtained. To relieve local troubles is not, in my opinion, a compensation for plunging the poor laws into confusion."

The bill was not passed over the veto.

May 9. To the Assembly:

**Veto of a bill entitled "An act to provide for laying out public roads and the alteration thereof in certain cases."**

" Chapter 431 of the Laws of 1875, amending the Revised Statutes, provides fully for the laying out and alteration of public roads. This act is not passed as an amendment, but as an original act, and seeks to provide for cases in which two or more juries have failed to agree upon the necessity and propriety of laying out or altering such highways. The mode of procedure is substantially the same as in other cases, except that a justice of the peace and the town clerk, of an adjoining town in the same county, are to be called in to act with the commissioners of highways of the town in which the road proposed to be laid out or altered is situated, in drawing a jury, which is to be obtained from such adjoining town. It is not right to submit the question of laying out roads in a town to juries and officers drawn from other towns. That two successive juries, drawn from the town in which a road is sought, have refused to order it, is generally good evidence that the road is not needed and ought not to be built. To enact that, therefore, the officials of another town, and a jury made up of the residents of that other town, may be called in and authorized to reverse the decision of the proper authorities of the town interested, is to take away from the people of a locality a discretion which they ought to exercise for themselves. They are, at least, entitled to the right of having their money expended by officers whom they choose themselves, rather than by those in whose selection they have no voice."

The bill was not passed over the veto.

May 9. To the Assembly:

**Veto of a bill entitled "An act to amend chapter 410 of the Laws of 1878, entitled 'An act to improve Flushing avenue, Long Island City.'"**

"This is a ponderous amendment to a long and detailed bill enacted at the session of 1878. The principle of special legislation for the improvement of single streets in cities is not one worthy of general approval, but the bill of last year was surrounded by safeguards which seemed to redeem it as far as possible from objection. The present act makes extended amendments which embody many objectionable features. For example, the commissioners and their successors are directed to curb and flag said Flushing avenue, and to construct any sewers which they may deem desirable to secure proper surface drainage to prevent the accumulation of water on those lands. The eighteenth section of the third article of the Constitution forbids the Legislature to pass any private or local bill providing for draining swamp or low lands. Under this clause, I suppose such an act as this is improper, if not unconstitutional. Again, in the fourth section, which by the present law requires all work to be done and materials furnished by contract or contracts founded on sealed bids or proposals to be awarded to the lowest bidder, an amendment is inserted by which these salutary restrictions are to be observed 'as far as practicable.' It thus virtually abrogates the provision for letting work and furnishing materials to the lowest bidder.[1]

A further objection to the bill is that it contains the provision that the improvement commissioners may, in their discretion, pay any award for damages made to any party in full, instead of the excess only of such award above the assessment for benefit and advantage to such party, as now prescribed by law. I have before objected to this provision in similar bills, and regard it as one likely to saddle assessed property in large amounts upon the city."

The bill was not passed over the veto.

May 9. To the Assembly:

**Veto of a bill entitled "An act relating to certain streets and avenues in Astoria, Long Island City."**

"This is a long detailed special bill providing for the improvement of certain streets and avenues in Long Island City. Somewhat similar provisions were enacted last year in regard to two avenues in that city, which were claimed to be peculiarly situated so as to require such interference by the Legislature. This bill embodies many objections which I have before urged to similar legislation. A general and important argument to be made against it and all bills of its class, is that such matters ought to be committed to the care of local authorities. To enact that such particular improvements for single streets may be committed to commissioners named by the Legislature, in whose selection the people of the localities have no voice whatever, is to inaugurate a dangerous and mischievous system of special interference with purely local matters. If these improvements are desirable, their regulation should be committed to the common council of the city. The Legislature ought not to exercise the functions of that body in dealing with them.''

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[1] The statute cited applies the rule as to canal contracts prescribed by Const. 1846, art. 7, § 3, am. 1854, 1874.

The bill was not passed over the veto.

May 9. To the Assembly:

**Veto of a bill entitled "An act to facilitate the trial of certain actions, and to provide for counting the ballots in any ballot-box or boxes deposited in the department of police in the city of Brooklyn, and to authorize evidence in relation thereto."**

" This bill is a special act relating to a re-canvass of the result of an election once before decided, for a single officer. It is not possible that any enactment should be more purely local and special, or constitute a more direct interference with the general rules governing the legal review of such cases. The Constitution has gone so far as to expressly declare that the Legislature should not pass a private or local bill in relation to the opening or conducting of elections, and it is certainly contrary to the spirit, if not the letter, of that instrument, that such an interference as this should be made with the methods prescribed by statute, to be followed by parties who feel aggrieved at the decisions of local canvassing boards.[y] If there has been injustice done in the instance sought to be reached by this act, it may easily be corrected by the courts under the existing general laws. To pass a special act interfering with the usual practice, is to set a dangerous precedent. Other and greater abuses would certainly follow. To prescribe that the boxes which contain the ballots cast upon an election nearly a year ago shall be now overhauled without any limit of time, is to put a great temptation in the way of interested parties to tamper with them and their contents. It would certainly lead to greater and more confused litigation than could arise under the general law with less prospect of a fair result. It would be far better for all parties concerned in this, as in other cases, to seek any redress to which they suppose themselves entitled, at the hands of the tribunals authorized to pass upon such questions in accordance with the general statutes upon the subject."

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[y] Const. 1846, art. 3, § 18, added 1874.

The bill was not passed over the veto.

May 13. To the Senate:

**Veto of a bill entitled "An act to incorporate the Eastern New York Fancier's Association."**

"By the first section of the eighth article of the Constitution it is provided that corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the Legislature, the objects of the corporation cannot be attained under general laws.

The Legislature, by the Laws of 1875, chapter 288, has made ample provision for the formation of societies having the same objects in view as the one proposed to be created by this bill. I do not discover a single purpose in any of the provisions of this act which may not be obtained by the organization of this association under the general act referred to. Its creation, therefore, by special act would be in violation of the Constitution."

The bill was not passed over the veto.

May 13. To the Senate:

**Veto of a bill entitled "An act to amend chapter 315 of the Laws of 1873, entitled 'An act to amend the Revised Statutes in relation to laying out public roads, and the alteration thereof and amendments thereto."**

"This bill, as its title imports, is an amendment of chapter 315 of the Laws of 1873. But as that act was repealed by chapter 431 of the Laws of 1875, the present bill would not be operative if it were approved."

The bill was not passed over the veto.

May 13. To the Assembly:

**Veto of the following items in the supply bill, chapter 272, passed May 13:**

"'For Stephen Myers, John Johnson, George Hawking, Perry Dyett, James Shaw and Peter Lawrence, for services to the Senate and Assembly, in charge of the closets of the Capitol and of committee rooms, under the appointment of the superintendent of the Capitol, to each of them, $100.'

This item is objected to, and not approved, for the reason that it is in direct violation of section 24, article 3, of the Constitution, which declares that 'the Legislature shall not, nor shall the common council of any city nor any board of supervisors grant any extra compensation to any public officer, servant, agent or contractor.' The persons named in this item are servants employed at a regular monthly compensation, as I am advised by the officers having charge of the Capitol, and this appropriation is an extra compensation.

'For the State survey, for extending its work during this year to the southern boundary of the State, and completing the survey in counties now partially finished, the sum of $15,000.'

This item is objected to, and not approved, for the reason that a similar sum has already been appropriated in the general appropriation bill. That appropriation was, in my judgment, of very doubtful propriety, as I have never been able to find out that any practical benefit was to be derived by the people of this State from the State survey. I am of opinion that it should be discontinued altogether. In any event it is of too little importance to warrant two appropriations in one year of $15,000 each.

'For the prosecution of the Adirondack survey to the close of the current fiscal year, as provided by chapter 370 of the Laws of 1878, $7,500.'

This item is objected to, and not approved, for the reason that the sum of $10,000 was appropriated for this purpose in a special bill of last year. That bill provided that the appropriation to this object should be $10,000 for each year, for six years. The sum of $10,000 has already been appropriated in the general appropriation bill, and the approval of this appropriation would make $17,500 for this year. I can see no reason, and no justification, for the appropriation. This survey, like the State survey, is of no necessity and of no real practical benefit. The special act of last year, declaring that this appropriation shall continue for six years, ought to be repealed, it being now apparent that the people will receive no adequate return for the money expended.

'For Francis Swift, $39,375.12.'[21]

This item is objected to and not approved. It is proposed by it to make compensation for extra work said to have been done under a contract for structures at quarantine. After careful consideration, I am of the opinion that the item must be regarded as, in every sense, extra compensation to a contractor, and therefore unconstitutional, under section 24, article 3, forbidding such an appropriation. But, even were it not open to the constitutional objection, such examination as I have been able to give it fails to convince me that it is a proper case for legislative interference. The contract under which the claim is made was finished and paid for in 1870. At that time an allowance amounting to $12,351.71 was allowed to the claimant for extra work, upon the certificate of the engineer under whose direction the work had been constructed, and who was familiar with all its details. As required by the contract itself, this certificate specified the amount of extra work for which the contractor was entitled to be paid, and the accuracy of the certificate was sworn to by the engineer. Upon the faith of it, a final payment was made by the Comptroller and accepted by the claimant on the 30th of December, 1870. The money was received and paid as the final settlement of the whole matter. In May, 1872, a resolution was passed by the Assembly directing the then State Engineer and Surveyor to make a survey and estimate. A report received from that officer in 1873, practically admits the impossibility of making such an estimate and survey correctly. The Legislature, in 1875, discarded this estimate, and ordered the Comptroller, Attorney General and State Engineer to examine into the claim and to report to the next Legislature. No such report has ever been made, and it is now, at the expiration of nearly ten years from the final settlement of the contract, brought up, and, upon the imperfect report of the State Engineer, above referred to, it is allowed in full. I have thus particularly referred to the history of this contract and the claim under it, because a majority of the Board of Audit, after considering it, have decided to allow it. While cheerfully conceding the care and ability with which the board have discharged their difficult duty, I regret that I am not able to agree with them as to the constitutionality, or the merits of this award, and the appropriation for its payment. I have not, however, reached this conclusion without carefully perusing the entire evidence taken before the Board of Audit, in support of the claim. The award can only be sustained by the direct impeachment of the sworn measurements of the engineer in charge of the work, who alone had opportunity to know exactly what the quantities were. It is not claimed that any such impeachment is offered, except by a conjecture of one other engineer, whose guess is founded on hearsay and unsworn evidence of interested parties.

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[21] Mr. Swift's claim was considered by the Court of Appeals in Swift v. New York (1882), 89 N. Y. 52, on an appeal from an award by the State Board of Audit, allowing him extra compensation on the contract referred to in this veto. The court held that the claimant had already received the full amount of the contract price, and that he was not entitled to any extra compensation.

'For Charles A. Danolds, $65,000.'[22]

This item is objected to and not approved, for the reason that in this case, as in the preceding one, the members of the Board of Audit were divided in opinion in regard to it, the majority having adopted a principle which is, in my judgment, erroneous. The claim is that of a contractor for prospective profits upon a contract for certain work on the State Reformatory, at Elmira. After some progress had been made in the work, the Legislature, being dissatisfied with the manner in which it was being carried on, and the unexpectedly large expenditures incurred and likely to be incurred, passed an act changing the mode of proceeding, and, in effect, putting an end to the progress of the work under the contracts which had been entered into by the commissioners, and adopting a new and more satisfactory method of completing it. The contractors were fully paid for all that they had done and all the materials that they

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[32] The Danolds case came before the Court of Appeals in Danolds v. New York (1882), 89 N. Y. 36, where it was held that if the State rescinded or avoided a contract for the erection of a public work without the contractor's consent, it was liable for prospective profits. Such a rescission of a contract by the State was a violation of the constitutional rule impairing the obligation of contracts. U. S. Const., art. 1, § 10, clause 1. An act passed in 1883, chap. 177, made an appropriation to pay the Danolds award with accrued interest.

had furnished, and suffered no loss whatever at the hands of the State. The claim now made by the assignee of the contractor is not for any actual loss, but solely for the prospective, speculative and uncertain profits, which it is supposed he might have made if he had been permitted to go on with the work under his contract. The decision of the Board of Audit, as I understand it, is based upon the assumption that the contractor is entitled to damages for such prospective profits. This assumption appears to me to be wholly wrong. The commissioners could not, under the law, make a contract which would bind the State to the payment of any such claim. I am not aware that the doctrine of allowing such profits has ever been followed or acted upon by the Legislature. I hold that a sovereign State, in the discharge of its powers and duties as an independent government, is at all times at full liberty to change its policy in regard to any public building in which the whole State has an interest, and that if upon such change by a public law, it takes care to prevent any actual loss to a contractor and keeps him entirely whole, it does all which it is in good faith bound to do. Parties who contract with the government know full well when they do so that it has, and must have, the right to exercise the power of changing its policy and its course of procedure in public affairs. It is not reduced to the level of an individual engaged in private business in this respect, and cannot be held liable as such. This inherent right of the government becomes, therefore, in fact a part of the contract. Believing this rule to be entirely sound, I consider the claim for prospective profits which might have been, or might not have been, realized entirely unsound. After a full and careful consideration of this question with the Attorney General, I find that I am in perfect accord with him in the views which I have expressed. I have received from him the following official opinion:

## STATE OF NEW YORK:

OFFICE OF THE ATTORNEY GENERAL,
ALBANY, *May* 10, 1879.

To His Excellency the Governor:

In response to the request of your Excellency for an opinion from this department upon the merits of the claims of George Worthington and Charles Danolds, in whose favor awards have been made by the Board of Audit, I have the honor to report, that, in my opinion, the awards made by the Board of Audit are based upon an erroneous principle.

The claimants had contracts with the State for certain work and materials in the construction of the Elmira Reformatory.

A general act of the Legislature (chapter 323 of the Laws of 1874) provided for changes of plan and different methods of superintendence and of doing the work and procuring the material. The effect of this legislation was to terminate the existing contracts.

The claimants did nothing under their contracts after the changes provided for took effect. They were, however, paid in full by the State for all work actually done, and for all material actually furnished, except a trivial sum in regard to which there is some conflict.

The claims allowed by the Board of Audit are for the gains or profits which the claimants insist they might have made if they had been permitted to continue the work under their contracts until the completion of the building.

The basis of the claim is that in the construction of public works at the expense and for the benefit of the entire public, the State acts only as an individual, is subject to the same rules, and liable for breaches of contract in the same manner as individuals, and bound to pay the possible profits that might have been made upon work not done and material not furnished.

In my opinion this principle does not apply to the State. In constructing public works the State acts as a sovereign. It exercises for that purpose its sovereign powers of taxation and of eminent domain. It acts for the whole public and not private benefit. It employs agencies for such purposes as it creates, and provides and abolishes compensation for official agencies for the administration of public affairs; and, except where restrained by constitutional provisions, the will of the people, as expressed through the Legislature and the forms of law, is supreme.

It has been, accordingly, held by the Court of Appeals that the act of 1874 was a legitimate exercise of legislative power.[a] It was an expression of the will of the sovereign that the public interests required changes in the construction of the reformatory and the superintendence and method of the work.

The true nature of the contracts entered into by the claimants was that they should continue the work and furnish the materials, stipulated by the contract, as long as the State should require them to do so, and no longer. The obligation of the contracts was that they should be paid, at the rates mentioned, for all that the State might require them to do and for any actual loss or damages sustained by reason of any changes the State might order. The State assumed no obligation to pay them conjectural profits upon what they were relieved from doing under their contracts.

In the case of public officers (in the absence of constitutional restrictions), the State may employ and dismiss them at pleasure, may increase or diminish their compensation or abridge their terms of office.

Although a public office is in the nature of a contract between the incumbent and the public, the incumbent has no vested title and no legal claim for damages by reason of the abrogation of his office or diminution of his compensation.

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[a] Lord v. Thomas (1876), 64 N. Y. 107.

Upon this question the Supreme Court of the United States has said:

"The promised compensation for services actually performed and accepted, during the continuance of the particular agency, may undoubtedly be claimed, both upon principles of compact and of equity; but to insist beyond this on the perpetuation of a public policy either useless or detrimental, and upon a reward for acts neither desired nor performed, would appear to be reconcilable with neither common justice nor common sense. The establishment of such a principle would arrest necessarily everything like progress or improvement in government. * * * It follows, then, upon principle, that, in every perfect or competent government, there must exist a general power to enact and to repeal laws; and to create, and change or discontinue, the agents designated for the execution of those laws." (10 How., U. S., 416.[aa])

The same principle has been sustained by the Court of Appeals of this State. (1 Selden, 285.[bb])

This principle applies with equal force to public works by the State and to the agencies employed in their construction, whether by contract or otherwise.

The right of the State to continue or discontinue public works, to change or abrogate the methods for their construction, and to employ and dismiss agents necessary for that purpose, must exist, or its power to act as a sovereign is ineffectual. If this power exists, there can be no breach of a contract entered into by the State for the construction of a public work, for the right of the State to suspend work and to make any desired change is implied in every such undertaking. No claim for future profits can therefore arise. The State performs its obligation by making full compensation.

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[aa] Butter v. Pennsylvania.

[bb] Conner v. Mayor, New York.

The court of claims at Washington, rejected claims of this character against the United States government, and the Supreme Court of the United States in a recent case (decided October, 1877) has applied the same principle. (M'Kee v. United States.[cc])

Upon these grounds, therefore, I am of opinion that the claims for which the awards in question have been made have no foundation in law or in justice.

Very respectfully yours,
A. SCHOONMAKER, JR.,
Attorney General."

In addition to the fundamental principles so clearly stated by the Attorney General, there is another objection which does not appear to have been considered by the Board of Audit, but which is entirely fatal. A careful examination of all the statutes relating to the reformatory reveals the fact that the commissioners never had any power to make contracts. The act establishing the board of commissioners, chapter 427 of the Laws of 1870, neither directed nor authorized the commissioners to do the work by contract. They were simply empowered to take charge of the design and construction of the building, and to expend such amounts thereon as the Legislature should see fit to appropriate. They were not empowered to contract the work or bind the State to further expenditures upon it. These contractors knew when they took their contract, and their assignees knew when they bought it, that the commissioners had no right to bind the State. They knew the Legislature could stop the work or remove the commissioners at any time, and they proceeded with these facts before them. No authority to contract this work was ever given until the passage of the act of 1874, under which the operations of Lord & Danolds, out of which the present claim arises, were finally stopped. Under these circumstances, the position that these parties are entitled to prospective profits, on a contract made in 1871, three years before anybody was authorized to contract, is untenable. The public faith has been in no way pledged to them, and they cannot urge their right to depend upon it.

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[cc] 97 U. S. 233.

'For George Worthington, $25,000.'*

This item is objected to and not approved, for the same reasons last above expressed. I understand the two cases to rest upon the same general facts, and to be governed by the same principles.

I have considered these questions with great respect and deference to the gentlemen composing the Board of Audit, whose labors and fidelity in the discharge of their important duties deserve the highest commendation. I have never before found occasion to differ with them, and I do so now with great reluctance. It ought, however, to be borne in mind that the law establishing the Board of Audit did not intend the decisions of the board to be final. Substantially, the board takes the place of the former standing committee on claims in the Legislature, and performs the duties which devolved upon those committees with much more thoroughness than it was possible for them to do; but the law leaves the decisions of the board in precisely the same condition as the reports of those committees formerly were, and the Legislature retains full power to withhold appropriations for the claims passed upon by the board, if, in its judgment, it is proper and right so to do. The same power of objection and disapproval also remains in the hands of the executive.

'For completing and finishing the removal of obstructions in Chautauqua lake, and in the outlet thereof, the sum of $2,000, the work to be done and money expended under the direction of the commissioners of navigation of said lake; but no part of said money herein appropriated shall be paid to such commissioners until they shall have executed a bond to the people of the State of New York, to be approved by the Comptroller, conditioned that they will faithfully discharge their duties as said commissioners, and duly account, under oath, to the Comptroller for all moneys received by them for the purposes aforesaid.'

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*An appropriation to pay the Worthington award, with accrued interest, was made by L. 1883, chap. 395.

This item is objected to, and not approved, for the reason that it seems to be an effort to establish permanently, this expenditure, as an annual contribution to the private interests concerned. There have been several appropriations of this character made on the ground that they were necessary or important for the navigation of the outlet of Chautauqua lake. They have amounted, in the aggregate, to $7,000. I cannot find that any general public interest, affecting the people of the State at large, has been subserved by these expenditures, and it certainly seems improper that the people of the whole State should be made to pay an annual contribution for the benefit of this one locality, or for any private enterprise connected with it.

'For the Comptroller, for the purchase of the bronze statue of Robert R. Livingston, now in the capitol, $5,000.'

This item is objected to and not approved, for the reason that after the extravagant outlays which have been made for the mere ornamentation of the New Capitol, no further expenditures in that direction should be permitted until the walls of the building are up and the roof completed.

'For the removal of obstructions in the Saranac river, between the middle and lower Saranac lakes, in the county of Franklin, to increase the capacity of said river for floating logs, the sum of $2,000, the work to be done and money expended under the direction of three commissioners, to be appointed by the county judge of said county of Franklin, and who shall serve without compensation, and who shall give such bonds as the said judge may require for the faithful performance of their duty.'

This item is objected to and not approved, for the reason that it is purely a local, private and personal enterprise, in which the State at large has no interest whatever. If the parties owning logs, desirous of floating them down the river, desire such an improvement, they are at liberty to make it, and should make it themselves. If the State commences to make such appropriations for purposes so purely local and special, there will soon be no end to the demand upon it for such aid.

'For the repairs of the State bridges on the Cattaraugus Indian reservation, $500, to be expended under the direction of D. N. Parker, of Gowanda, who is hereby appointed a commissioner for that purpose, who shall receive out of said sum three dollars per day for each full day occupied by him in the discharge of such duty, but for not exceeding twenty days in the aggregate, and who shall execute to the people of this State a bond, to be approved by the Comptroller, for the faithful performance of his duties as such commissioner.'

This item is objected to and not approved, for the reason that I have for three years in succession vetoed appropriations of this character, on the ground that they are expressly prohibited by the Constitution. On that point there can be no doubt whatever. Section 18 of article 3 of the Constitution declares that 'the Legislature shall not pass a private or local bill * * * providing for building bridges, and chartering companies for such purposes, except on the Hudson river below Waterford, and on the East river, or over the waters forming a part of the boundaries of the State.' The fact that the Constitution makes certain exceptions shows it intended to exclude everything else, and there is no pretense on which the Indian reservations can be considered otherwise than as local and private. The Indian reservations do not in any sense belong to the State. It has no power to use them, to dispose of them, or in any way to manage them. The State cannot appoint commissioners, or any other officers who will have any right to go upon the Indian lands at all, and under the recent decisions of the courts the Indians themselves cannot give away any such license, and the State cannot do it without the consent of Congress.*

'For repairing and macadamizing the road across the Onondaga Indian reservation, leading from what is known as the 'Castle Hotel,' in the town of Onondaga, to a point intersecting the road leading by the house of Edwin Clark, the sum of $1,000 to be expended under the supervision of Thomas Nesdall, of Syracuse, who is hereby appointed a commissioner for that purpose, who shall receive out of said sum three dollars per day for each full day occupied by him in the discharge of such duty, but for not exceeding fifteen days in the aggregate, and who shall execute to the people of this State a bond, to be approved by the Comptroller, for the faithful performance of his duties as such commissioner.'

This item is objected to and not approved, for the reasons last above stated; the same article and section of the Constitution above referred to being equally explicit in forbidding the laying out or working of highways.

'For the Buffalo State Asylum for the Insane. * * * And the further sum of $10,000, to be paid to the city of Buffalo for the privilege of discharging such sewer into the said named sewer.'

This item is objected to and not approved, for the reason that the State is under no obligation to pay for the privilege of connecting the sewer with the main sewer of the street. It would be an unwarranted assumption if the city were to charge a private property-owner any such royalty, and it is still worse for it to attempt to extort it from the State, upon which it had no right to make an assessment or levy taxes. It would certainly seem that after the State has expended over a million of dollars in erecting a palatial asylum for the insane, and in beautifying its surroundings, it should be entitled to the privilege of connecting its sewerage with the existing system of the city without being compelled to make a gratuitous donation of $10,000 to the city itself. So far as my knowledge goes, such a tribute has never before been levied on the State on account of any similar institution.

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* See Seneca Nation v. Hammond (1875), 6 T. & C. 595.

'For the Board of Commissioners of Quarantine, to carry out the contract made by them with John A. Appleton for the purchase of real estate in the town of Southfield, Richmond county, dated November 26, 1872, and approved by the Commissioners of the Land Office, December 18, 1872, the sum of $3,500, or so much thereof as may be necessary, ' to grade down the hill thereon near New York avenue to a level on an easy slope from said avenue, so that no part of the land within 400 feet from New York avenue should be more than six feet above the grade of the avenue directly opposite to it,' as specified in said contract.'

This item is objected to and not approved, for the reason that I am advised by the Quarantine Commissioners that this is an exorbitant price for the work sought to be done, and that the work itself is not necessary. The station referred to has already cost the State nearly $200,000. It is further stated to me that the annual appropriation made in this bill for quarantine is ample to pay for the grading mentioned, if it should turn out that the State is under any obligation to do it."

May 13. To the Assembly:

**Veto of a bill entitled "An act in relation to fine salt lots on the Onondaga Salt Springs Reservation."**

"The first and only section of the bill reads as follows: 'Whenever any fine salt lots on the Onondaga Salt Springs Reservation, which have heretofore been conveyed to the State for the purpose of manufacturing fine salt thereon without any pecuniary consideration for such conveyance, shall, in the opinion of the Superintendent of the Onondaga Salt Springs, be no longer necessary for the purpose of such manufacture, the Commissioners of the Land Office may, in their discretion, reconvey the said lots, or any of them, to the original grantors, their heirs or assigns, upon the payment of the expense of such transfer and conveyance, without other or further consideration for the same.'

The constitutional provision regulating the lands owned by the State, contiguous to the salt springs, is as follows: 'The Legislature shall never sell or dispose of the salt springs belonging to this State. The lands contiguous thereto and which may be necessary and convenient for the use of the salt springs may be sold by authority of law, and under the direction of the Commissioners of the Land Office, for the purpose of investing the moneys arising therefrom in other lands alike convenient; but by such sale and purchase the aggregate quantity of these lands shall not be diminished.'[dd]

The bill provides, not that the lands be sold, but that they be given away. It is not to be inferred, because the lands were conveyed to the State without pecuniary compensation to the former owners, that they were given to the State out of pure generosity, and that, therefore, there is an equitable claim on the part of their original owners to have them back without consideration. The lands were, no doubt, conveyed in consideration of advantages to the grantors other than the receipt of money. It may have been greatly to their interest to convey the lands to the State, and take back leases with the obligation on the part of the State to furnish said lot or lots with salt water from the public pumps. Their former owners unquestionably converted these lands from private lands into State lands, in order to reap some benefit from the change of title, and this benefit they have had.

There is no more reason, apparent to me, why the State should give away these lands to their former owners than to any one else, nor any reason why it should give them away to any one."

The bill was not passed over the veto.

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[dd] **Const. 1846, art. 7, § 7.**

May 15. To the Assembly:

**Veto of a bill entitled "An act to authorize the formation of town insurance companies."** [23]

"Some days after this bill was passed, I received from the Legislature another bill on the same subject, to wit, Assembly bill No. 184, which I have this day approved. The only difference in the object of the two bills is that the latter authorizes also the formation of county insurance companies. It covers all the proper objects sought to be attained by the present bill. There is little difference in their arrangement or general provisions, except that the expression of the latter bill is by far the more clear and comprehensive. If either bill were to be enacted, the latter is unquestionably the proper one. It would certainly be unwise and dangerous to put upon the statute book two acts upon the same subject differing in expression. If the second bill had not been passed, the looseness with which the present one is drawn would be, in my judgment, a sufficient objection to its approval. Considerable amendment would be necessary to secure its practical operation."

May 16. To the Assembly:

**Veto of a bill entitled "An act to amend chapter 173 of the Laws of 1874, entitled 'An act to fix the time for transacting the business of the town at the annual town meeting for election of town officers.'"**

"The present law provides that no measure involving the expenditure of money shall be introduced at a town meeting after two o'clock in the afternoon. The object of this bill is to change the hour named to three o'clock. In my judgment, the present limit is sufficiently liberal. If any change were to be made, it would better be in the direction of fixing the limit at an earlier hour instead of a later. A very large part of the voters attending a town meeting, of necessity, leave early in the afternoon, and it is not proper that opportunity should be given to interested parties to spring upon the town meeting late in the afternoon a proposition involving the expenditure of money, and thereby make an addition to the burdens of the taxpayers without their knowledge or consent. The ordinary experience of most of the towns in this State is that as many propositions looking to the expenditure of public money are ordinarily introduced before two o'clock as are compatible with the interest of taxpayers."

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[23] The town insurance companies bill was not passed over the veto. The other bill referred to in the message, became chapter 287, passed May 15, and authorized the formation of county and town insurance companies.

The bill was not passed over the veto.

May 16. To the Assembly:

**Veto of a bill entitled "An act to prevent fraud in the sale or exchange of merchandise."**

"I am unable to find in this bill any good purpose which is not fully to be attained under existing general laws for the punishment of fraud in transactions similar to those sought to be covered. Such wrongs are now easy of correction and punishment. It does not seem to me wise to encumber the statute books with cumulative proceedings when the existing laws provide prompt and sufficient penalties for every transgression at which the bill is aimed."

The bill was not passed over the veto.

May 19. To the Assembly:

**Veto of a bill entitled "An act further to amend chapter 472 of the Laws of 1875, entitled 'An act to confer powers of local legislation and administration, and to regulate the compensation of supervisors.'"**

"This bill gives to the board of supervisors of any county the right, by a three-fourths vote of the members elected, to authorize the annual town meetings, and all special town meetings, in any town in their county, to be held by election districts, and to prescribe the manner in which the town business shall be conducted in such districts, and the results ascertained and recorded, without reference to the wishes of the residents of the town in question. It does not seem to me that such an innovation upon the existing policy of the law is justifiable. The section sought to be amended by this bill empowered the boards of supervisors, upon the application of any town by vote of the town meeting, to take the action provided. Chapter 285 of the Laws of 1878 prescribed a method by which the towns, after having adopted the new system, could return to the former system of holding one poll at town meetings, but the present bill authorizes the board of supervisors to completely ignore the citizens of the town. It is manifestly inconsistent with the act of 1878, while it does not, either in terms or by implication, repeal it. It would thus be possible for the board of supervisors, without any request from a town, to authorize the town meetings therein to be held by election districts. Under the act of 1878, in the very next year the town could return to the old system, and a year thereafter be sent back to the election district system by the board of supervisors. Nothing but confusion could result from such inconsistent legislation."

The bill was not passed over the veto.

May 19. To the Assembly:

**Veto of a bill entitled "An act to amend section 2 of chapter 514 of the Laws of 1875, entitled 'An act to provide for the election of police justices of villages,' as amended by chapter 308 of the Laws of 1879, so far as the same applies and relates to the police justice of the village of Wolcott, in the county of Wayne.'"**

"I have several times before condemned the mischievous practice of amending general laws as far as they relate to a single village, town, or county. In this way the salutary provisions of law which have been enacted in response to the growing public sentiment against special legislation may soon be broken down and destroyed. The present bill is a fair example of the manner in which the general laws are tampered with for special purposes, and is open to the objections which I have often before stated in disapproving similar measures. Amending a general act so far as it relates to a particular locality only, is in every case a mere subterfuge. It is special legislation and nothing else. The Constitution cannot thus be evaded."[**]

The bill was not passed over the veto.

May 19. To the Assembly:

**Veto of a bill entitled "An act authorizing the publication of certain legal notices in the county of Erie in a newspaper printed in the German language."**

"The subject of the publication of notices in courts of record throughout the State has been largely confined, in many classes of action, to the discretion of the court itself. It is not wise to commence the practice of taking that supervision from the court of special acts and making different rules for different localities. If, in the judgment of the Legislature, authority should be given to the courts to print legal notices in the German, French, or other foreign language, it should be by a general act applying to the whole State. It certainly should not be by a local act confided to the courts as a matter of discretion for exercise in some one county only."

The bill was not passed over the veto.

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[**] Const. 1846, art. 3, § 18, added 1874.

May 19. To the Assembly:

**Veto of a bill entitled "An act authorizing the board of education of Union free school district number one, Milton, to issue bonds to be known as 'extended school bonds,' to pay the school district bonds of said district maturing in the years 1880, 1885, 1890, and 1895."[24]**

"This bill provides for the issue by the board of education of the school district named, of $20,000, in bonds and their sale, in the manner prescribed in the bill. It further provides that the proceeds of the sale of said bonds shall be paid into the treasury of said school district for the purpose of paying the bonds of said district heretofore issued, and known as school bonds, and the interest thereon. I have heretofore disapproved bills authorizing the issue of bonds to pay interest on outstanding obligations. It is bad policy in any business to borrow money to pay interest. It is still worse to do it for any public purpose. The people are likely to have burdens enough upon their resources twenty years hence, without the addition of compound interest, and it is plainly our duty to refrain from thus transferring our own burdens, in an aggravated form, to those who are to come after us."

May 19. To the Assembly:

**Veto of a bill entitled "An act to confirm the action of the trustees of the village of Saratoga Springs in purchasing lands for cemetery purposes."**

"This bill has been warmly urged by some, and as warmly opposed by other prominent residents of Saratoga Springs. The purchase which it seeks to validate has been, and for aught I know, still is, the subject of bitter litigation, and although I am informed that it has been stipulated to discontinue one suit rising out of it, I am also informed that it is the purpose of other citizens to test the legality of the original purchase. Much has been urged in regard to the impoverished financial condition of the village of Saratoga Springs, and the absolute inability of the taxpayers to sustain further burdens unless absolutely imposed upon them by their own acts. After a careful consideration of the conflicting statement in regard to the purchase, I am fully convinced that this bill ought not to be approved. If the action of the trustees was valid, no statute is now needed. If it was not valid, and the corporation is not bound by it, it is very doubtful if the Legislature can effectually ratify it. To approve this bill now would probably precipitate upon this overburdened village additional litigation, complications, and expense."

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[24] The Milton Union School bond bill was not passed over the veto, but another bill on the same subject, obviating the Governor's objections, was passed and became a law, chapter 433, on the 30th of May. This act required the interest on the former bonds to be paid either from the premium on the proceeds of the sale of the new bonds, or by direct taxation.

The bill was not passed over the veto.

May 19. To the Assembly:

**Veto of a bill entitled "An act to amend chapter 105 of the Laws of 1868, entitled 'An act to provide for draining certain swamp lands in the town of New Rochelle, in the county of Westchester,' and also to amend chapter 547 of the Laws of 1870, passed May 2, 1870, being an amendment to said act, and also to amend chapter 295 of the Laws of 1871, passed April 5, 1871, being likewise an amendment of the foregoing several acts."**

"It appears that, by the several acts as they now stand, the expense of the drainage provided for is to be assessed on the lands benefited, except that a portion thereof, to wit, $5,000, and no more, is to be a charge upon the town of New Rochelle. This bill proposes to enlarge this limit to $8,000. It does not propose to submit the matter to the town meeting, but arbitrarily imposes the additional charge. The town authorities protest.

The propriety, or equity, of the town assuming an additional charge in the matter is a question with which, it seems to me, the town meeting is more competent to deal than we are; and the bill, if passed at all, ought not to have gone beyond authorizing the town to take upon itself the additional burden, if it saw fit so to do. The work was undertaken and carried on with the well understood condition that the town was not to contribute over $5,000. There is, therefore, nothing in the nature of a claim on the town which the Legislature might feel bound to enforce. Any further payments by the town ought to be voluntary. With the protest of the town authorities before me, I cannot approve the bill."

The bill was not passed over the veto.

May 19. To the Assembly: Transmitting a communication from the light house engineer for the third district, relative to the cession of land for light house purposes at Cold Harbor, Long Island.[26]

May 20. To the Assembly:

**Veto of a bill entitled "An act to amend chapter 374 of the laws of 1878, entitled 'An act to amend chapter 200 of the Laws of 1874, entitled 'An act to authorize the appraisal and sale of leased fine salt lots on the Onondaga Salt Springs reservation by the commissioners of the land office, and to authorize the sale of certain coarse salt lands, the removal of vats therefrom, and the purchase of other lands in lieu thereof."**

"The principal object of this bill is to cast upon the State the expense of removing the store-houses connected with the vats on the salt lands sold. No good reason is shown for imposing this expense upon the taxpayers, and it would far better be borne by the purchasers. The State is under no obligation, express or implied, to pay for these removals; and the bill, if approved, would simply be a donation of the amount it would cost to make them to the parties who have purchased the lots. I know of no reason for favoring such gifts by the State, be they large or small."

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[26] The next year, 1880, by chapter 29, passed February 25, jurisdiction of land at Cold Spring harbor on Long Island was ceded to the United States for the purpose of establishing range lights.

The bill was not passed over the veto.

May 21. To the Assembly:

**Veto of a bill entitled "An act to amend the articles of association of the Atlantic Avenue Railroad Company, of Brooklyn, and to provide for the construction and operation of an elevated railroad on Atlantic Avenue in the city of Brooklyn.**

"No bill of the present session has been so earnestly and elaborately urged upon the Legislature and the Executive as this. Voluminous correspondence and the arguments of able counsel have been presented for and against it. It is a measure which is undoubtedly desired by a large and respectable portion of the residents of the city of Brooklyn. I do not doubt the justice and sincerity of their claim that rapid transit is urgently needed by their city, and that the Atlantic avenue route seems the most feasible on which to inaugurate it. Indeed, I am so well convinced of the popular feeling that I think the disapproval of the present measure is only to be justified by constitutional objections which would render it utterly void if enacted. I have given much time and thought to the consideration of the constitutional questions involved, and the very able and learned arguments in which they have been discussed.

The scanty time at my command does not permit me to review all the points involved, nor to summarize even the arguments presented upon them, or to state with any satisfactory fullness my views upon those which seem to me controlling. But I shall state with all possible conciseness two objections which I believe to be fatal.

The object sought to be accomplished is to grant authority to the Atlantic Avenue Railroad Company to elevate, construct, and operate, with steam or other mechanical motive power, its railroad, along, through, and upon Atlantic avenue, in the city of Brooklyn, in the manner prescribed by the bill.

From the conceded facts, it appears that the Atlantic Avenue Railroad Company is a corporation which has by legal transfer succeeded to the rights, the duties, and the obligations of the Brooklyn and Jamaica Railroad Company. Among other rights of that succession, it is the owner of a special charter authorizing it to operate a surface railroad on Atlantic avenue, in Brooklyn. It is urged, in behalf of the company, that since it already has surface tracks upon Atlantic avenue, the right to authorize the elevation of those tracks, and their operation as an elevated road, necessarily remains in the Legislature. Against this view, it is claimed that the enactment of such a provision is a legislative grant of the power to lay down railroad tracks, and therefore contrary to the eighteenth section of article third of the Constitution. These differing views of the validity of the measure have been urged respectively at great length. After carefully weighing all that has been said on both sides, I am firmly of the opinion that the bill does violate the eighteenth section of the third article. It is a local and special bill. It does grant the right to lay down railroad tracks. It is no answer to this statement to claim that it simply authorizes the elevation of the track. It is certain that the Atlantic Avenue Company has not the right to elevate those tracks now. If done at all, it must be done by virtue of this bill. Yet it is freely admitted that the Legislature can make no constitutional grant of the right to lay railroad tracks by local or special acts. If this bill does not grant the power, then the Atlantic Avenue Railroad Company would as well attempt to elevate their tracks without it. If it is such a grant it is unconstitutional and void. No prohibition of the organic law is more emphatic than that which forbids the Legislature to pass a local or private act granting to any corporation, association, or individual the right to lay down railroad tracks. If any such authority is covered, intended, or implied by this bill, it is absolutely null. The bill would not be operative, would result in tedious litigation, and would seriously postpone the accomplishment of rapid transit, instead of hastening it. I am fully convinced that the measure is open to this fatal constitutional objection, and is, therefore, nugatory. The people intended by the constitutional amendments of 1874, to take away from the Legislature, utterly, the power to authorize the construction of railroads by local or special act. They meant to destroy forever the system of special grants to favored corporations by which private property might be forcibly taken away or destroyed without hearing or compensation. Under those amendments as adopted, the Legislature is entirely powerless to enact such bills as this. Certainly, no benefit to any city or locality, in the State, would be at all adequate to compensate the people for the calamity of a return to the corrupt and dangerous system of special railroad charters, which the amendments of the Constitution aimed to destroy. The history of that species of legislation is still fresh in the minds of the people. They will not tolerate its re-establishment.

Again, it is conceded that the Legislature cannot grant to any other corporation than the Atlantic Avenue Company the right to lay these elevated tracks on the route covered by this bill. It certainly is not to be claimed that the Atlantic Avenue Company stands on a different footing because of its existing charter for a surface road. To take this position is to say that in every street in the State upon which a horse railroad is laid through special charter, all citizens, except that horse railroad corporation, are, by the Constitution, debarred from obtaining a special charter for an elevated road at the hands of the Legislature, but that the horse railroad company may still receive the privilege forbidden to all others. This is neither good law nor common justice. Following the constitutional amendments of 1874, the general law passed in 1875 provided an easy and simple method by which rapid transit companies might be organized in accordance with the provisions of the Constitution. To that act all parties should resort who desire to construct such railways. Through the provisions of that law an elevated railway may easily be obtained, and rapid transit in Atlantic avenue accomplished in far better method, and more speedily, than by such a bill as this. The rights of property owners will be observed, and the desire of the public fully as well realized. More than that, an expensive and tedious litigation will be avoided, with its attendant delay.

As the second objection, I note that in at least one particular the present bill is a violation of the Constitution of the United States. That instrument provides that no State Legislature shall pass a law impairing the obligation of contracts.[24] By a contract authorized by one Legislature, and ratified by another, nearly twenty years ago, the corporation to which the Atlantic Avenue Railroad is the successor, bound itself never to use steam on Atlantic avenue. For that contract they received a heavy pecuniary consideration from the property owners upon the avenue. In 1876 an act was passed by the Legislature authorizing the use of steam along a certain part of that avenue. This act was claimed to be in violation of the terms of the contract above mentioned, and out of it has arisen a litigation which is still pending undetermined in the State and United States Courts.[25] It is now proposed by the present bill to sanction the use of steam through the entire length of Atlantic avenue, thus raising anew the question involved in this litigation as to all that part of Atlantic avenue not covered by the act of 1876. No good answer is made to the claim that this bill is a substantial impairment of the obligations of that contract. Upon the facts, as I understand them, it seems to be such an interference with the vested rights of the parties to that contract and their successors. Certainly the State is in no position to take any other ground, and is fairly concluded from disputing the validity of an obligation which has been ratified by the action of its Legislature, its law officers, and its courts.

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[24] U. S. Const. art. 1, § 10, clause 1.

[25] Governor Robinson probably referred to People v. Brooklyn F. & C. I. R. Co., 89 N. Y. 75, in which the act of 1876, chapter 187, authorizing the use of steam power on Atlantic avenue, was sustained.

The only effective plea set up in opposition to this theory is, that by the foreclosure of the mortgage, executed in 1855, upon the road, franchises, and properties of the Brooklyn and Jamaica Railroad Company, the right to use steam on the avenue was carried; that the contract by which the right was surrendered was not made until 1859, and that as the Atlantic Avenue Railroad Company holds the road and franchises by virtue of a decree and deed in foreclosure upon the original mortgage, it is not liable for the contract of 1859. This claim is untenable for the reason that the foreclosure decree and the deed made in pursuance of it, under which the Atlantic Avenue Railroad Company holds, both expressly reserve the rights secured by that contract.

I do not discuss the minor points raised, that no cognizance should be taken of a private contract in the consideration of a legislative act, because it seems to me beneath the dignity of a great State to ignore the rights of parties secured by a contract, whose making it authorized and whose obligations it has ratified in two distinct statutes. Whether or not it be true that the consent of the Legislature was necessary to this contract in regard to the use of steam, it is certain that they did give to it the highest form of legislative assent, and in my judgment it cannot now be claimed that the State is not bound to take full notice of the private rights which depend upon that contract, and of which the enactment of this bill would be a flagrant invasion. It is proper to add that in these views I am fully sustained by the Attorney General.

For the reasons above given, and others which lack of time forbids me to detail, I regard this bill as a direct violation of the Constitution of the State, and that of the United States, and therefore void."

The bill was not passed over the veto.

May 22. The Legislature adjourned without day.

## MEMORANDUMS FILED WITH BILLS BEFORE THE ADJOURNMENT OF THE LEGISLATURE.

March 5.

**Memorandum filed with Senate bill, chapter 65, relating to the liquidation of the liabilities of the New Capitol Commissioners, which became a law without the Governor's approval.**

" Senate bill, No. 20, entitled 'An act making appropriations for the liquidation of the present liabilities of the New Capitol Commissioners, and for continuing work upon the New Capitol through the winter and spring of eighteen hundred and seventy-nine,' is filed herewith in the office of the Secretary of State, ten days having expired since it was presented to me.

I have declined to approve it, because I am of opinion that, in its recognition of the $340,000 of indebtedness incurred by the New Capitol Commissioners as State liabilities, it is in conflict with the stringent provisions of section twelve, article seven of the Constitution. These provisions were intended to guard against the creation of any debt in any form without submitting the question to a vote of the people, except in the special instances mentioned in sections ten and eleven of said article. The only exception which can possibly apply to the indebtedness for which this appropriation is to provide, is that of 'expenses not provided for.' In my judgment that phrase is intended to apply simply, and only, to expenses for the ordinary administration of the powers of the government and not to expenses for the construction of canals, railroads or public buildings of any kind. I have, however, consulted with the New Capitol Commissioners, one of whom is the Attorney General, and, also, with the Judiciary Committee of the Senate, to whom this bill was referred. The Attorney General and a majority of the said committee are of opinion that expenses for the New Capitol may be regarded as expenses not provided for within the meaning of that phrase, in the tenth section of the seventh article.

It is claimed, also, that inasmuch as the Legislature directed the commissioners to complete certain work, they were authorized and compelled to incur any amount of indebtedness which might be found necessary, if the appropriation made for the purpose proved to be insufficient. I can find nothing in the statute which seems to me to warrant any such construction. It made no allusion to any indebtedness and used no language which could be construed into an authority for incurring any unless by implication. But even if it had done so, its action would, in my view of the case, have been absolutely void, because the Constitution itself forbids the creation of any such debt by the Legislature or by any one else, except by submission to the people. In deference, however, to the opinions of the Attorney General and the Judiciary Committee above referred to I have concluded, whilst withholding my approval from the bill, to allow it to pass the constitutional limit of ten days,[88] leaving the question of its validity to the appropriate judicial tribunals if any one shall choose to carry it there. I, nevertheless, protest most earnestly against its being regarded in any manner as a precedent for the incurring of any debt hereafter not clearly warranted by the letter and spirit of the Constitution."

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[88] Const. 1846, art. 4, § 9, am. 1874.

April 23.

**Memorandum filed with the legislative apportionment bill, chapter 208, which became a law without the Governor's approval.**

"No mandate of the Constitution is more explicit than that which imposes upon the Legislature the duty of altering the Senate and Assembly districts at the first session after the return of every enumeration of the inhabitants of the State, in the manner provided in the Constitution.[hh] Such an enumeration was had in the year 1875, and the oath taken by the Members of the Legislature in the ensuing year, bound them to make a reapportionment. But they did not do so, and three sessions have now been suffered to pass without the discharge of this plain and simple duty. I have repeatedly expressed to the Legislature my opinion of this flagrant violation of our organic law. I need not now reiterate it. Again and again has this constitutional command been held up to the Legislature, only to be disregarded. The labor of a single day in each House could at any time have compassed a proper and constitutional measure; but, until a fortnight since, no bill on the subject was matured. Ten days ago the present bill was passed by the Legislature. I would gladly have given it my signature and thus, even at this last day, wiped away from the State the reproach of a broken Constitution. But, as I peruse its provisions, I find that a proper regard for my own official duty forbids me to approve it; for not less explicit than the command to apportion is that other provision that the apportionment shall be made as nearly as may be, according to the number of the respective inhabitants of the different localities.

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[hh] Const. 1846, art. 3, §§ 3, 5.

The Senate districts are to be so apportioned that they shall consist of contiguous territory and contain, as nearly as may be, an equal number of inhabitants, and the Members of Assembly are to be allotted to the several counties, as nearly as may be, according to the number of their respective inhabitants. This bill does not comply with these provisions of the Constitution. The first Senate district contains 128,267 inhabitants; the Second, 160,000. The Nineteenth district contains 101,693; the Fourteenth, 150,204. The Thirty-second district contains 106,522; the adjacent, Thirty-first district, 180,000. Some slight inequalities of population were, doubtless, necessary in the arrangement of the districts from contiguous territory, but a glance at the map will show that the rank injustice done in almost every district west of the Hudson river had some other cause than a desire for geographic fitness. For instance, the Twenty-sixth district stretches from the Pennsylvania line to Lake Ontario, and others are scarcely less incongruous. To specify the localities which are wronged either in the location or in the population of the Senate districts, would be to call the roll of half the counties in the State. That these wrongs were in nearly every case unnecessary is the common testimony of all who are familiar with the subject.

In the distribution of Members of Assembly the bill is still further from meeting the requirements of the Constitution. I find that Cattaraugus county, with 45,737 inhabitants, has two members; while Suffolk, with 50,330, is given but one. Orange with 82,225 inhabitants has but two members, while St. Lawrence, with only 78,014, gets three. Nor can I understand the philosophy which gives to the latter county, with 78,000 inhabitants, the same representation as Monroe, which exceeds it in population by nearly fifty thousand.

These discrepancies are not to be explained. They admit of no apology or excuse. They are of the same class as the so-called necessity which entirely deprived 150,000 inhabitants in New York and Kings of their proper representation.

I might cite other instances equally glaring, but I deem the ones given sufficient to illustrate the injustice of the measure. These and similar defects forbid that I should sign this bill, and the question as to its disposition resolves itself into the choice between a continued disregard of both mandates of the Constitution as to apportionment and the acceptance of this partial and imperfect compliance. Suffering this bill to become a law, there is removed from our State the disgrace of a refusal to apportion at all. There remains, and must remain, the reproach of an unfair and unequal division of the Senators and Members. While for the reasons stated I am not willing to sign the bill, it is permitted to pass into a law by lapse of time as a lesser evil than a continued neglect of the entire constitutional direction on the subject.''

May 13.

**Memorandum filed with the Supply bill, chapter 272, approving an appropriation for the New Capitol.**

'' In all my annual messages, and in various other ways, I have expressed fully my views in regard to the extravagant expenditures, useless ornaments, and great inconveniences of the New Capitol. In my last annual message I suggested that inasmuch as the Legislature was now provided for, it seemed to me proper that further appropriations and taxation should cease until the people should be better able than they now are to pay the heavy exactions made for this object, I urged that, if the work was to go on, measures should be taken for the adoption of some plan to complete it in a less ostentatious and expensive style. I regret that any further appropriation should be made at present, but the question was submitted to the Legislature, elected by the people, to represent them upon this subject as well as all others. The representatives of the people, thus chosen, have made a further appropriation of five hundred thousand dollars. They have annexed to it the conditions that the money shall be expended upon the walls and roof of the building, without any internal ornamentation. Under these circumstances, much as I regret the appropriation, I think it would not be proper for me to attempt to defeat it by a veto. The responsibility for it rests with the members of the Legislature, elected by the people, in view of all the facts."

## THIRTY-DAY BILLS.

June 20.

**Memorandum filed with Senate bill, chapter 538, reducing the legal rate of interest. Approved.**[11]

" I have examined this bill with a sincere desire to find in it such relief for the burdened debtor class in our community as would warrant a prompt approval. Nothing would seem easier than to draw a bill reducing the rate of interest from seven to six per cent. I very much regret that the language and construction of this bill is so involved and uncertain, that it will not probably effect the great relief expected from it. Nevertheless, hoping, that despite its faults, it may be of some benefit to those who sorely need it, I have concluded to sign it, rather than by its disapproval to longer postpone the reform it proposes to effect.

If its defects do not defeat its operation it may, by actual experiment, decide the mooted question of the wisdom of a reduction of the interest rate. If, on the other hand, its faults nullify it, the attention of the people will be the more sharply drawn to the crying evils of hasty and careless legislation."

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[11] This act was sustained in Morley v. Lake Shore & M. S. R. Co. (1892), 146 U. S. 162, affirming (1884), 95 N. Y. 428, 667.

June 21.

**Veto Senate bill entitled "An act to provide for the removal of obstructions from the outlet of Cayuga Lake and the channel of Seneca river."**

"This is a new appearance of a very old object of expenditure. After the Erie canal was constructed, the proprietors of the Cayuga marshes and swamps set up the claim that the construction of the canal had damaged their property, and from time to time appropriations were made amounting in the aggregate to $355,000, for the alleged purpose of draining the Cayuga marshes. It was found in the course of these efforts that the bed of the outlet of the Cayuga and Seneca lakes was composed of solid rock for a very long distance, and that the only mode of effectually draining these swamps was to lower the bed of that outlet so as to lower the waters of the lake. In the vain effort to accomplish that purpose several hundreds of thousands of dollars were spent. No marked effect was produced by any of these expenditures. The money was practically wasted. It is not pretended now that the expenditure of the thirty thousand dollars proposed to be appropriated by this bill will accomplish this purpose, so that the outlay if made will amount to nothing. I cannot ascertain from the best information within my reach that there is any considerable rise in the waters of the lake above its natural level. Like all small lakes, it is of course more or less affected by heavy rains and storms of wind, but I see no reason to believe that any considerable effect is produced upon it by the construction of the canal. For more than fifty years the channel of the outlet of the Cayuga and

Seneca lakes under the canal has been sufficient to carry off all the water without any sensible increase of the water in Cayuga lake, and without any complaint upon that subject until very recently. But if there is any such effect produced upon the waters of the lake as is now complained of, there is quite as much reason to attribute it to the deposits along the line of the railroad bridge as to the banks of the canal and probably much more.

Moreover, if, as is most probable, this expenditure is to be made for the purpose of draining swamps and low lands and benefiting the property of private individuals, it is directly forbidden by the eighteenth section of the third article of the Constitution."

June 21.

**Veto Assembly bill entitled "An act to amend chapter 147 of the Laws of 1876, entitled 'An act granting to the United States the right to acquire the right of way necessary for the improvement of the Harlem river and Spuyten Duyvil Creek, from the North River to the East River, through the Harlem kills, and ceding jurisdiction over the same.'"**

"By chapter 147 of the Laws of 1876, the State of New York ceded its jurisdiction to the United States, and made provision for acquiring the right of way from the East river to the Hudson river, for the purpose of improving the channel of the Harlem river. At the last session of the Legislature, by chapter 345 of the Laws of 1879, the act of 1876 was amended in some particulars so as to complete the right and power of the United States to proceed with the contemplated improvement. In neither of the acts was there any provision whatever looking to the payment of the expense or any part of it by the State of New York. Jurisdiction of the State was ceded, and all the conditions of those acts were fixed on the assumption that the improvement was to be made and the expenses paid by the United

States. Subsequent to the last act, chapter 345, Laws of 1879, the bill now before me was passed further amending the act of 1876, by adding to the first section thereof the following words: 'The same to be paid for by the State of New York out of any moneys in the treasury not otherwise appropriated; said amount not to exceed ten thousand dollars.' I can see no reason or excuse for this enactment. The whole expense of the contemplated improvement should be paid by the government which makes it and holds jurisdiction over it. If the State is to pay for it or for any part of it, it should have done the work itself and retained its jurisdiction over it."

June 21.

**Veto of Assembly bill, entitled "An act to appoint a commission to revise the laws for the assessment and collection of taxes."[27]**

"All past experience has shown that any attempt to transfer the responsibilities and duties of the Legislature to commissions or committees to sit during the recess is utterly useless. There is no reason to believe that this commission would form any exception to the general rule. Everything that a commission can do with a view to improve the assessment and tax laws has been done. A few years since a very able and competent commission was appointed for that purpose. A full and exhaustive examination of the whole subject was made by it, and all the facts bearing upon the various questions were reported to the Legislature. That report, with all its wealth of facts and reasoning, has remained untouched to this day. The State Assessors have also from time to time exposed the inequalities of the tax laws and urged their revision. I can see no use in a new commission to travel over the same ground at a heavy expense to the taxpayers and with no hope of any better result. The difficulty must be cured by the Legislature itself. No new commission can do it or materially aid in the doing of it. The subject was elaborately discussed in both houses of the Legislature during the recent session, and they were undoubtedly as well prepared to act upon it as they ever will be. The only excuse made for neglecting it was a lack of time. But they had ample time to pass over seven hundred other bills, most of them of no general importance whatever. If this commission should go into operation, and should spend all the time remaining during the present year at a cost of ninety dollars a day for salaries, besides expenses, the report to be made to the Legislature at the opening of the next session would simply present the matter anew to the Legislature at precisely the point where they left it. It would be referred again to the appropriate committees, would go through another round of discussion, and perhaps end by being referred to still another commission. I think it far more likely that a satisfactory result will be arrived at, if the Legislature is left to understand that when it meets again the people will demand that it shall take hold of this subject in earnest and meet its responsibilities and perform its duties without leaving them to outside commissions who have the power to talk but not to act.

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[27] See 1881, note 1 for references to several tax laws, *post*, p. 515.

It is with profound regret that I find myself unable to see any relief for the suffering taxpayers in this measure. Their distress is real and not imaginary. Of all the subjects which demanded the attention of the Legislature this was the greatest. That this pressing call has been thus lightly treated, while so many local and trivial interests have monopolized legislative attention is a great misfortune to the people. But its enactment simply means the waste of many thousands of dollars without any return. The appropriation made is only fifteen thousand dollars, but the expenses are not limited, and would certainly far exceed the amount appropriated."

June 21.

**Veto of Assembly bill, entitled "An act to authorize and require the Secretary of State to collect and report labor statistics."** [28]

"If the appropriation of five thousand dollars made by this bill should be approved, the Secretary of State would of course consider himself bound to attempt to do something with it. It is, however, entirely clear that it would be out of his power to accomplish anything with so small a sum which would be of the least value to anybody. It would require more than a hundred thousand dollars to obtain the labor statistics mentioned in the bill as fully as they are already contained in the State census. In so large a State as this, containing five millions of inhabitants engaged in nearly every branch of human industry, it would be impracticable to ascertain anything at all reliable in regard to the 'commercial, industrial, social, educational and sanitary conditions' of all classes of the laboring community without an immense expenditure of money and a thorough and efficient organization in every county of the State. The appropriation made in this bill would not enable the Secretary to ascertain the facts required from any one of the thirty-two senatorial districts in the State. To attempt to do it would be simply a waste of the five thousand dollars."

June 21.

**Veto Senate bill entitled "An act to authorize the board of Regents of the University of the State of New York to purchase certain autographic letters of revolutionary interest from Charles Broom to be deposited in the State Library, and making an appropriation for the same."**

"The letters referred to in this bill do not seem to have any historical importance, and can only be considered valuable as old family relics. There is as little reason for purchasing them out of the public funds of the State as there is for purchasing the fossils referred to in the memorandum accompanying the bill for that purpose.''

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[28] A bureau of labor statistics was established in 1883, by chapter 356.

June 21.

**Veto Assembly bill, entitled "An act for the purchase of Washington's Headquarters in the village of Tappan."**

"This bill appropriates six thousand dollars for the purchase of a place called Washington's headquarters, in the village of Tappan, Rockland county. The public has always believed, and acted upon the belief, that the principal headquarters of General Washington, on the Hudson river, were at Newburgh. It is well known that the house and premises at that place, known as Washington's headquarters, are kept up, and have been for a long series of years, by liberal appropriations from the State treasury. It cannot be considered advisable now to open a new and rival establishment a few miles further down the river, to become, of course, another burden upon the treasury through all future years. If the advocates of this measure can show to the public and the Legislature that the existing conviction is an error, and that the actual location was at Tappan instead of at Newburgh, a bill to purchase the true headquarters should contain provisions for the transfer of the valuable collection of revolutionary relics now at Newburgh, to the new establishment. As this seems not to have been contemplated by the Legislature, the whole matter would, perhaps, as well await another session.''

June 21.

**Veto of Assembly bill, entitled "An act to authorize the Board of Regents to purchase objects of natural history, and making an appropriation therefor."**

''A full account of all the money which has been expended, and most of it wasted, upon what is called the natural history of the State, would afford little encouragement for going any further in that direction under any circumstances. In the present condition of financial distress the State has too many necessary expenses to warrant the outlay of four thousand dollars in the purchase of fossils."

June 21.

**Veto Senate bill entitled "An act to provide for a revision, amendment and consolidation of the act entitled 'An act to provide for the enrollment of the militia, for the organization of the National Guard of the State of New York, and for the public defense,' and entitled 'The Military Code' and of all acts amendatory thereof and supplemental thereto, or relating to the organization and government of the militia of the State."**[29]

"The remarks made in regard to the proposed commission for revising the tax and assessment laws so far as they relate to the policy of committing legislative duties to outside commissions, are equally applicable to the commission intended to be appointed by this act. At least $4,000, and probably more, would be expended in the preparation of an act which the Legislature must take up anew and act upon at its next session. There is no occasion for any such commission or any such expenditure. The laws relating to the organization and the discipline of the National Guard were prepared, and have been from time to time amended with great care. Some further amendment and abridgments are undoubtedly desirable, but there is no occasion whatever for making a new code. Such changes as are necessary can easily be provided for in a bill to be drawn by the Adjutant General and Judge Advocate General, after receiving such suggestions as the officers of the National Guard may choose to make, in a very short time, and with much better result than could be hoped for from a commission of eight."

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[29] See 1880, note 5, for further information relating to the revision of the Military Code, *post*, p. .

June 21. The omnibus veto included the following bills:

Relative to the State school moneys in Monroe and Seneca counties.

Relative to securities held by the Bank Department to redeem the circulation of State banks.

Amending supervisors' act relative to changing the location of court-houses and jails.

Relative to the amount of property authorized to be held by county medical societies.

Relative to the duties and compensation of the register of New York.

Extending the time for the collection of taxes in Binghamton.

Establishing parks, preserves and hunting grounds in the forests of the State.

Relative to the railroad bonds of Orleans, Jefferson county.

Providing for appeals from the decision of the Board of Audit.

Reviving the Gypsum Cemetery Association in Ontario county.

Abolishing the use of weigh-locks on the canals.

Relative to the Orange County Mutual Insurance Company.

Prescribing the size, weight and appearance of ballots.

Legalizing the official acts of Falkner E. Noyes as justice of the peace.

Amending the excise laws relative to commissioners, etc.

Amending the general drainage act.

Amending the charter of Cohoes relative to liability for damages, etc.

For the drainage of the abandoned canals.

Incorporating the Washington Rifles of New York City.

Incorporating the American Chronological and Autographical Society.

Relative to taxes of that portion of the city of Albany taken from Bethlehem and Watervliet in 1870.

Relative to the keeping open of public offices in Westchester county.

Applying the town board of auditor act to the town of Moravia.

Exempting the International Fair Association from taxation.

Legalizing the official acts of H. P. Horton as justice of the peace.

Legalizing the official acts of A. S. Weller as justice of the peace.

Extending the registry law to the town of New Lots.

Extending the definition of the crime of perjury.

Amending the charter of Buffalo relative to the police and park departments.

Relative to summary proceedings to recover land in New York.

Empowering the assessors of Flushing to correct the assessment maps of the town.

Amending the charter of Saratoga Springs, relative to the fire department.

Relative to evidences of indebtedness issued by commissioners of drainage.

Relative to the fire department of Buffalo.

For a further outlet for the Third Avenue sewer in Brooklyn.

Relative to assessments for grading and paving Grand street in Brooklyn.

Amending act creating a police pension fund in Brooklyn.

Relative to the liabilities of stockholders of banking associations.

Exempting Westchester and Washington counties from a certain act relative to pauper children.

To punish tramps.

Relative to the duties and compensation of the county clerk of New York.

For the continuance of certain suits or actions.

Amending act relative to lands of which parties die seized.

Amending act relative to the care and custody of the insane.

Defining the causes and procedure for removing officials in New York city.

Amending act establishing regulations for the port of New York.

For the relief of "The Locomotive Engineers' Mutual Benefit Association."

Incorporating the Life Saving Benevolent Association of Buffalo.

For straightening Mud Creek in the town of Clay.

Amending act to erect a separate road district in Middleburgh.

For the relief of the St. Regis Indians.

Relative to draining swamp land in New Rochelle.

Increasing the compensation and salary of the county judge and the surrogate of Monroe County.

Relative to the judiciary.

Relative to the proceedings of the board of health of Buffalo.

Amending act for the incorporation of benevolent societies.

Amending act for the incorporation of manufacturing corporations.

Relative to proceedings in surrogates' courts on final accounting.

Amending act relative to weights and measures as far as it affects potatoes.

Amending act relative to services in criminal cases.

Amending act relative to the sale and disposition of real estate of their testator by administrators.

Amending act establishing the Binghamton Insane Asylum.

Extending time for the redemption of lands bid in at the tax sale of 1877.

Exempting Ulster county from the law making commissioners of highways inspectors of plankroads and turnpikes.

Relative to the police department of New York city.

For the better protection of the traveling public, giving the power of arrest to conductors.

For the preservation of shell-fish in Cold Spring harbor, Lloyd's harbor, Huntington bay, Huntington harbor, Centreport harbor, Northport bay and harbor and Orient harbor.

Amending act relative to judicial officers elected to fill vacancy and legalizing an election in Livingston county.

For a postponement of certain taxes on bonds issued to the Midland railroad.

Repealing act relative to a police justice in Tonawanda.

Incorporating the Oneonta Fire Department.

Incorporating the National Tent of the National Order of Independent Rechabites of North America.

Amending act for the appraisal of canal claims.

Amending act relative to hackney coaches and carriages in New York.

Relative to the Metropolitan Transit Company.

Relative to sales of lands for unpaid taxes in Queens County.

Relative to floating lumber and logs and other timber upon the rivers and streams of the State.

Relative to solicitors of passengers or patronage for steamers, railroads and hotels.

Amending act relative to the care of the estates of idiots, etc.

Relative to the election of justices of the peace in Brooklyn.

Incorporating the New York Jewelers' Association.

Relative to the village of Baldwinsville.

Authorizing the city of Binghamton to accept a foot bridge.

Amending the charter of the Society for the Protection of Destitute Roman Catholic Children.

Amending the charter of Brooklyn relative to the departments of city works and health.

For the appointment of additional notaries public.

Amending act to promote medical science.

Relative to unpaid taxes in Hempstead.

Continuing the use of a business name or designation in certain cases.

Amending the Military Code.

For the payment of the expenses of the department of docks in New York and for the acquisition of property for dock purposes.

Relative to receivers of moneyed corporations.

Incorporating the Rochester Electro-Medical Institute.

Relative to certain graduates of the Harvard University and Yale College law schools.

Relative to the partition of lands held by husband and wife as joint-tenants, tenants in common or as tenants by entireties.

Amending act to prevent the adulteration of milk.

Relative to printing the Codes of Criminal Procedure and the Penal Code.

Relative to certain officers in Kingston.

For the relief of the Attica and Arcade Railroad Company.

Regulating the erection of public or livery stables in New York.

To define the mode of trial of an action to abate and enjoin a nuisance in which no money damage is sought to be recovered.

Regulating the examination and reports of fire and fire and inland navigation companies.

For the appointment of policemen by district telegraph companies.

Amending the charter of Little Falls.

Amending the charter of Lancaster.

Amending Supervisors' act relative to streets in territory adjoining cities.

Enabling villages to extend their corporate limits for the protection of the public health.

To prevent the spread of the yellows among peach trees.

To consolidate the deficiency indebtedness of Brooklyn.

For the relief of Theodore P. Ballou.

Authorizing the Canal Appraisers to hear claims for damages on the Lansingkill creek and Mohawk river in Oneida county.

Incorporating the Merchants' Exchange Salesroom.

Relative to the intersection of certain avenues in Long Island City.

Donating a collection of fossils to the Westfield Academy.

Relative to proceedings in the surrogate's court in New York.

Relative to certain improvements in the city of New York.

Amending act annexing West Farms and Morrisania to New York city.

The Code of Criminal Procedure.

The Penal Code.

For a ferry across the Genesee River in Rochester.

Relative to the payment of annuities due the Onondaga Indians.

Relative to the compensation of armorers in cities.

Establishing a board of police commissioners in Brooklyn.

Extending the operation of the mechanics' lien law to excavations for piers, wharves, etc.

To prevent trespassing and intrusion upon railroad cars and engines.

Incorporating the Grand Council of Royal Templars of Temperance.

Relative to fees in summary proceedings to recover land in New York city.

### 1880. JANUARY 6. LEGISLATURE, ONE HUNDRED AND THIRD SESSION.

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### ALONZO B. CORNELL, Governor.

## ANNUAL MESSAGE.

## STATE OF NEW YORK:

Executive Chamber,
Albany, *January* 6, 1880.

To the Legislature.—In obedience to the Constitution, information relative to the condition of the State is herewith communicated, with such suggestions and recommendations as are deemed expedient.

The year just closed has been one of increasing prosperity and encouragement. With the resumption of specie payments by the National Government, and the restoration of a sound financial basis, there has been marked improvement in all business affairs. Renewed confidence has set in motion the current of industrial activity, and willing hands have had ready employment. Ample crops have found eager markets, and agricultural interests have abundantly prospered. There has been unusual exemption from disease, while peace and good order have prevailed within our borders. Seldom, indeed, has there been such cause for thankfulness. May we, as a people, have a realizing sense of gratitude for the Divine favor so generously bestowed upon us.

### Finances.

The finances of the State are reported to be in a satisfactory condition. The operations of the last fiscal year and the general condition of the State treasury, on the 30th of September, 1879, are shown by the following statement:

A. B. Cornell

| | |
|---|---|
| Aggregate balances in the Treasury of all the funds October 1, 1878 | $4,293,883.54 |
| Aggregate receipts during the fiscal year ending September 30, 1879 | 12,852,944.88 |
| | $17,146,828.42 |
| Deduct payments during the year | 12,628,472.01 |
| Balance in the Treasury, Sept. 30, 1879. | $4,518,356.41 |

| | |
|---|---|
| The amount of receipts into the Treasury on account of the General Fund revenue, during the year ending September 30, 1879. | $7,101,964.40 |
| The payments. | 7,191,533.60 |
| Apparent deficiency, September 30, 1879. | $89,569.20 |

### SUPPLEMENTARY STATEMENT.

| | | |
|---|---|---|
| Balance due from County Treasurers, September 30, 1879, on State tax of 1878 | | $147,984.66 |
| Add amount paid on account of 1879 appropriations included in tax levy of last year, payable in State treasury in April and May, 1880 | | 835,352.18 |
| | | $983,336.84 |
| Deduct apparent deficiency of the revenue, September 30, 1879, as shown in preceding statement. | $89,569.20 | |
| Also balances of 1878, appropriations unpaid and in force September 30, 1879 | 274,725.59 | |

| | | |
|---|---|---|
| Also balance of 1879, appropriation for New Capitol, not included in tax levy.... | $217,763.56 | |
| | | $582,058.35 |
| Actual surplus September 30, 1879.... | | $401,278.49 |

### DEBT.

On the 30th September, 1878, the total funded debt was $9,154,054.87, classified as follows:

| | |
|---|---|
| General Fund ........................ | $122,694.87 |
| Canal. ............................ | 9,020,360.00 |
| Bounty. ............................ | 11,000.00 |
| | $9,154,054.87 |

On the 30th September, 1879, the total funded debt was $9,122,054.87, classified as follows:

| | |
|---|---|
| General Fund. ........................ | $122,694.87 |
| Canal. ............................ | 8,988,360.00 |
| Bounty. ............................ | 11,000.00 |
| | $9,122,054.87 |

The General Fund State debt is all paid, and the item of $122,694.87, included above, represents the amount required to yield, at the rate of six per cent, the sum necessary to pay the Indian annuities. The balance of $11,000, Bounty Debt for which funds are provided, had not been presented for redemption at the close of the fiscal year. A balance of $1,451,628.48 in the Canal Sinking Fund, leaves the amount of that debt, unprovided for, September 30, 1879, at $7,536.-731.52.

| | |
|---|---|
| The State Debt on the 30th September, 1878, after deducting the unapplied balance of the Sinking funds, amounted to.. | $8,130,726.69 |
| On the 30th September, 1879 (including $122,694.87), to ........................ | 7,659,426.39 |
| Showing net contributions to the Sinking Fund of................................ | $471,300.30 |
| The actual reduction of the debt during the same period by cancellation being. | $32,000.00 |

## TAXATION.

For the fiscal year 1879, the tax levy was at the rate of $2\frac{863}{1000}$ mills, which is expected to produce the sum of $7,690,416.34, while that of the previous year, being at the rate of $2\frac{9}{10}$ mills, produced the sum of $7,941,297.94.

Among the questions which public sentiment will press upon your attention, is a revision of the laws for the assessment of property as a basis of taxation. The laws now in force are imperfect and unequal in their operation. By unjust discriminations, enormous values of property which should contribute a fair proportion to the public revenue are allowed to escape taxation, thus imposing onerous burdens upon a portion of our citizens. Perhaps no subject demands more careful consideration, and a wiser exercise of sound judgment. The important and complex questions involved require close, constant and long-continued examination, and it is doubted whether the necessary attention can be devoted to them during an ordinary legislative session. It is, therefore, suggested that the subject be placed in the hands of a commission fairly representing the agricultural, commercial and other material interests of the State, to perfect a plan for the consideration of the next Legislature. It is believed that such course would give the best promise of an early and final determination of this important question.[1]

### CANALS.

The aggregate receipts of the canals from tolls, and all miscellaneous sources, for the fiscal year ending September 30, 1879, were $921,252.81, being less than the preceding year by $67,398.54. The total expenses for ordinary repairs, superintendence and collection of tolls were $751,774.82, or $12,025.85 more than the year previous. The surplus revenues were $169,477.99, showing a decrease, as compared with the preceding year, of $79,424.39.

The constitutional requirements[a] in regard to the canal debt for the year are as follows:

| | |
|---|---|
| For interest on canal debt | $540,822.00 |
| For sinking fund for the extinguishment of the debt | 450,000.00 |
| Total | $990,822.00 |
| Surplus revenues applied | 169,477.99 |
| Deficiency to be provided for by taxation | $821,344.01 |
| Expenses for extraordinary repairs and damages paid from taxes the past year were | 139,478.43 |
| Total amount contributed by the taxpayers on account of the canals for the year | $960,822.44 |

---

[1] The Assembly and Senate on the 4th and 11th of February respectively, adopted a resolution appointing a joint committee of three members of the Assembly and five senators, to examine the subject of a revision of the tax laws and report at the same session. Afterwards the committee was increased by adding two senators and three members of Assembly.

The committee did not present a general report, but on the 24th of March introduced a bill amending the tax law of 1855, chapter 37, by providing for the taxation of non-resident money or property used in business in this State. The bill was passed, but was vetoed on the 4th of May. See 1881, note 1, *post*, p. 515.

[a] Const. 1846, art. 7, §§ 1, 3, am. 1854, 1874.

The laws regulating canal management were enacted prior to the change in the Constitution creating the present mode of administration,[b] and are in many respects insufficient for public requirements. Some legislation is therefore necessary to accomplish all that was contemplated by the new system.[2]

### PUBLIC EDUCATION.

There is no subject in which the people have a deeper concern than that of public education. The policy of the State in relation to its school system has been steadily progressive, and each decade has witnessed an important advance in this great interest. Pre-eminent in population and intelligence, New York has no prouder record than her educational development.

Wisely enacted laws provide for the support of common, or primary schools, everywhere within reach of the humblest child, and permit local communities to establish such advanced grades of academic education, as they may desire for the more ambitious students. The best interests of the State will be promoted by placing the highest educational advantages within the reach of all who seek them.

The policy of making women eligible as school officers has been adopted in several States with beneficial results, and the question is exciting much discussion in this State. Women are equally competent with men for this duty, and it cannot be doubted that their admission to representation would largely increase the efficiency of our school management. The favorable attention of the Legislature is earnestly directed to this subject.[3]

---

[b] Const. 1846, art. 5, § 3, am. 1876.

[2] Chapter 493, approved May 28, contained numerous provisions relative to the canal department under the supervision of the superintendent of public works, defining in many particulars his duties and the duties of the State Engineer and Surveyor, and also the powers and duties of subordinate officers and agents in the department.

Chapter 99, passed April 7, contained similar provisions relating especially to canal repairs and improvements.

[3] By chapter 9, passed February 12, women were made eligible to school offices, and became entitled to vote at school meetings.

The Superintendent of Public Instruction has furnished from the statistics gathered by him, the following statement relative to the support of the common schools, and the attendance of pupils, during the year ending September 30, 1879:

## COMMON SCHOOL STATISTICS.

| | |
|---|---|
| Total receipts, including balance on hand September 30, 1878 | $11,293,716.40 |
| Total expenditures | 10,323,961.90 |
| Amount paid for teachers' wages | 7,600,392.00 |
| Amount paid for school houses, repairs, furniture, etc. | 1,205,687.03 |
| Estimated value of school houses and sites. | 30,767,479.00 |
| Number of school houses | 11,862 |
| Number of school districts, exclusive of cities | 11,280 |
| Number of teachers employed for the legal term of school | 20,295 |
| Number of teachers employed during any portion of the year | 30,669 |
| Number of children attending public schools | 1,030,041 |
| Number of persons attending Normal schools | 5,385 |
| Number of children of school age in private schools | 114,460 |
| Number of volumes in school district libraries | 755,380 |
| Number of persons in the State between the ages of five and twenty-one years | 1,628,727 |

## STATE PRISONS.

Under the operation of the recent amendment to the Constitution,[c] the State prisons have been nearly self-supporting the past year. Gratifying as this may appear in a general view, it has been accomplished at some detriment to certain mechanical interests with which prison manufactures have come in direct competition. Many intelligent and industrious mechanics represent that great hardship proceeds from this cause. While it is desirable that the prisons should be as little burdensome as possible, care should be taken to avoid all unnecessary interference with industrial interests.

---

[c] Const. 1846, art. 5, § 4, am. 1876.

The earnings and expenditures of the several prisons of the State for the year ending September 30, 1879, are shown in the following exhibit:

### AUBURN.

| | | |
|---|---|---|
| Earnings | $128,694.00 | |
| Expenses | 126,505.72 | |
| Surplus | | $2,188.28 |

### SING SING.

| | | |
|---|---|---|
| Earnings | $226,907.04 | |
| Expenses | 187,693.23 | |
| Surplus | | 39,213.81 |
| Total surplus | | $41,402.09 |

### CLINTON.

| | | |
|---|---|---|
| Earnings | $46,762.75 | |
| Expenses | 108,539.02 | |
| Deficiency | | 61,776.27 |
| Total deficiency | | $20,374.18 |

## INSURANCE.

There are doing business in this State 178 fire insurance companies, classified as follows: New York, 89; other States, 68; Foreign, 21; having, in total assets, $139,093,601; liabilities, including capital stock, $98,558,223; net surplus, $40,535,377.

While these companies present this financial showing, there is much cause for solicitude in the fact that the losses and expenditures during the last six months exceed the gross earnings by $4,361,188; also that the previous surplus has been diminished by $3,051,051; and of the eighty-three New York companies only ten have kept up their surplus. Such facts strongly indicate that the companies are either insuring at too low rates, or they are conducting business in an expensive and hazardous manner.

Of the 3,693 fires which occurred in the United States in 1878, involving losses amounting to $19,000,000, more than 2,000, with an aggregate loss of $11,000,000, were of incendiary or undiscovered origin. In view thereof, it is worthy of consideration whether additional legislation is not required to suppress the crime of incendiarism.

There are at present fifteen life insurance companies organized and doing business under the laws of this State, with aggregate assets of $206,552,630; liabilities, $174,793,338; surplus to policy holders, $31,759,292; and nineteen other State companies with assets of $197,526,513; liabilities, $164,792,287; surplus, $32,734,226. Seventeen marine insurance companies are also in operation (eight of which are organized under the laws of New York), with assets amounting to $21,000,000 and a net surplus of $2,700,000.

The laws of 1853 require foreign fire and life insurance companies to deposit securities in the Insurance Department of the State, but as no such requirement is made of marine companies, the question arises for the Legislature to determine whether or not there is substantial reason for any exception in their case.[4]

## BANKS.

On the 1st of October last, seventy-three banks of discount and deposit were doing business under the laws of the State, with an aggregate capital of $19,353,200.

The number of savings banks reporting July 1, 1879, was one hundred and thirty-one, of which twelve were closing and not receiving new deposits.

| | |
|---|---|
| The total assets were | $341,368,686 |
| Due depositors | 304,692,339 |
| Surplus | 36,326,929 |
| Number of depositors | 827,852 |

The increase in the several items for the last preceding six months was:

| | |
|---|---|
| Assets | $7,131,375 |
| Deposits | 5,617,700 |
| Surplus | 1,773,667 |
| Number of depositors | 17,835 |

The improvement thus shown in the condition of the savings banks is encouraging, as contrasted with the frequent disasters of the past few years.

The reduced income from investments renders economy of management the more important. That such economy is feasible, is evident from the fact, that while each depositor's account in the savings banks of this State costs for management $1.63, the same service in Connecticut and New Hampshire is but $1.11, and in Massachusetts only 89 cents.

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[4] Chapter 428, approved May 27, required foreign fire and marine insurance companies to have approved securities amounting to $500,000, and to make the same deposits in the insurance department of this State as were required of foreign insurance companies under existing laws.

| | |
|---|---|
| There were on July 1, eight Trust Companies with an aggregate capital of | $6,851,875 |
| Assets | 66,240,568 |
| Liabilities, exclusive of capital | 53,855,629 |
| Surplus | 5,533,063 |
| Four Mortgage and Guaranty Companies with an aggregate capital of | 4,525,500 |
| Surplus | 1,024,551 |

## NATIONAL GUARD.

The National Guard is represented as being in excellent condition, both in general composition and equipment. The discipline of the organization has been for several years steadily improving, and whenever its services have been required it has never failed promptly and cheerfully to perform efficient duty. Happily no necessity has arisen during the past year for active service, except in a few instances where guard duty was required at executions.

The organization consists of seven divisions and thirteen brigades, embracing the several branches of service, as follows: Twenty-three regiments, six battalions, and thirty-three separate companies of infantry; one regiment and eleven separate troops of cavalry; and of artillery, one battalion, nine separate light batteries, and two batteries armed with Gatling guns. In the aggregate number there are 20,280 officers and enlisted men.

The Military Code of the State is composed of ancient enactments that have been amended from time to time as occasion required. Thus incumbered, it has become in many respects incongruous and impracticable. It is recommended, therefore, that a commission composed of officers of suitable rank in the National Guard be authorized to codify the military laws, and to revise the regulations accordingly.[5]

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[5] Chapter 546, approved June 4, created a commission composed of the Adjutant General, Inspector General and Chief of Ordnance, and three commissioned officers in the National Guard, one of whom was to be a lawyer of

In the firm belief that an effective military force, prepared for instant duty, is a useful conservator of the public peace, the National Guard is commended to your favorable consideration.

## THE NEW CAPITOL.

The Commissioners in charge of the erection of the New Capitol report that the total amount expended to date is $9,600,681.65. The amount standing charged to this account on the books of the Comptroller is $10,261,870.84. The difference between these two statements is assumed to be in the cost of land and other expenses incurred prior to the beginning of the construction account. Of the sum first mentioned $132,583.45 were paid for furnishing the completed portion of the building.

The last appropriation of $500,000 for the continuation of the work was made not available by the terms of the act, until the Commissioners had filed a written certificate with the Secretary of State, to the effect that after examining the estimates, plans and specifications, they were satisfied the building could be completed at a further cost of $3,500,000 over and above that appropriation. This provision was complied with, and the Commissioners claim that the record of work performed during the year demonstrates the correctness of their estimates, and proves that if there shall be no considerable advance in the price of labor and materials the building can be completed for the sum stated. The Commissioners are also of opinion that the prosecution of the work to the best advantage will require appropriations of $1,500,000 for the ensuing year,

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ten years standing, who were to revise the military code, and present a report early in the session of 1881. A new military code was reported by the Commission to the Legislature on the 25th of March 1881, (Assembly Document No. 80.) A military code bill was passed in 1882, but was vetoed by Governor Cornell. Another bill was passed in 1883, and became a law, chapter 299, on the 23d of April. Section 7 (disbandment) was sustained in People ex rel. Leo v. Hill (1891), 126 N. Y. 497.

and $1,000,000 for each of the two years thereafter, and that the entire building can be made ready for occupation within three years from this time.[6]

As a member of the New Capitol Commission in 1868, my most earnest endeavors were made in opposition to commencing the Capitol, in the belief that it could not be constructed within the limit of $4,000,000, as then fixed by the Legislature; but the Commission decided to proceed and the building was begun. The work has progressed under appropriations by successive Legislatures, notwithstanding the pronounced objections of the last three Executives, until it is now so far advanced that there seems to be no rational course left but to provide for its completion in the most advantageous manner possible. In this view it is suggested whether it may not be best to provide the necessary means by a loan under the twelfth section of article seven of the Constitution, by which arrangement a portion of the burden would be placed upon the future taxpayers, who will enjoy the use of this grand but costly edifice.

## INSANE ASYLUMS AND CHARITABLE INSTITUTIONS.

From statistics furnished by the State Board of Charities, there were in the several asylums and almshouses on the 1st of October, 1879, of insane persons, as follows: Males, 3,961; females, 5,054; total, 9,015.

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[6] Chapter 33, passed February 28, 1880, appropriated $100,000 for the completion of the Senate chamber, and directed the New Capitol Commissioners to provide for the completion and furnishing of the Executive and Senate chambers, ready for occupancy on the 1st of January, 1881.

Chapter 138, passed April 20, appropriated $1,500,000 for work on the New Capitol, to be applied in the first instance, towards the Senate and Executive chambers, and the roofing of that part of the building.

Chapter 549, charged the New Capitol Commissioners with the care and superintendence of the south center portion of the Capitol when completed, vested in them the appointment of subordinates, and appropriated $25,000 for the care of the Capitol.

There were of insane persons in all public and private institutions:

| | |
|---|---|
| November 30, 1878 ............................ | 8,771 |
| November 30, 1877 ............................ | 7,921 |

The condition of the insane in the poor-houses of the State is pitiable in the extreme, and urgently demands attention. The last Legislature provided for the conversion of the State Inebriate Asylum, at Binghamton, into an asylum for the chronic insane. The building is now being adapted to this purpose, and will soon be ready for 300 patients. The same Legislature also made provision for additional accommodations for 250 women at the Willard Asylum. The buildings are now being erected, and will probably be available early in the coming summer. There are in this asylum about 200 female patients in excess of its proper capacity, so that the new buildings will only relieve the present crowded condition of the institution.

The annual report of the State Board of Charities will contain much valuable and interesting information in detail with reference to the unfortunate classes under their supervision, and it will doubtless receive your considerate attention.

## COUNTY JAILS AND POOR-HOUSES.

Many of the county jails and poor-houses in the State are represented to be a disgrace to our civilization. Instead of serving their legitimate purposes they are said to appear more like nurseries of immorality, squalor and crime. Philanthropic citizens who have labored zealously to ameliorate the condition of the unfortunate inmates of these institutions, are urgent in their demands for reformation. The indiscriminate confinement of petty offenders and persons awaiting the action of grand juries, in the same apartments with the most hardened criminals, must almost of necessity result in increasing the degradation of those who should be shielded from malign influences while in the custody of the authorities. The practice of confining felons in the penitentiaries instead of the State prisons is also deemed unwise and injurious. While referring to this subject it is suggested that an extension of the jurisdiction of the State Board of Charities over the local prisons and poor-houses might lead to beneficial results in an important direction.[7]

## EMIGRATION.

The whole number of passengers from foreign ports landed in New York from January 1 to December 1, 1879, was 167,665, of whom 39,560 were citizens, or persons who had previously been in the United States; and 128,105 were aliens. The number of steerage passengers landed at Castle Garden was 127,271, being an increase of 50,726 over the preceding year, and largely in excess of any year since 1873. It is expected that emigration next season will show a corresponding increase.

The number of emigrants remaining in the State Emigrant Refuge and hospitals is 484, of which number 81 are insane. At the Castle Garden Labor Bureau employment was procured during the same period for 15,235 emigrants, and a large number were forwarded to inland destinations wholly or in part at the expense of the Commissioners of Emigration.

Of the appropriation of $170,000 made by the Legislature for the maintenance of the State Emigrant institutions for the year beginning May 1, 1879, there have been expended $103,295.14, leaving $66,704.86 for the remaining five months of the year.

The decision of the Supreme Court of the United States, rendered March 20, 1876, declaring unconstitutional and void the laws of the State requiring indemnity or guarantee by commutation for the support of indigent emigrants, has imposed a serious burden upon the State.[8] In obedience to the direction of the Legislature, the Commissioners of Emigration appealed to Congress for relief, but no result has yet been secured. A bill to regulate emigration, approved by all the Representatives from this State, has recently been introduced in Congress, and it is hoped that it will receive favorable consideration. It is recommended, therefore, that the Legislature take some formal action in behalf of the measure.

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[7] See 1879, note 4, for appointment of commission to investigate county jails, penitentiaries and reformatories, *ante*, p. 287.

## QUARANTINE.

During the past season 1,142 vessels from ports liable to visitations of yellow fever were examined by the Quarantine officers at the port of New York, of which 284 were from ports known to be infected. Ninety-five vessels had 256 cases of yellow fever on their passage, or in port under quarantine. Fifty cases of fever were treated in the Quarantine hospitals, of which twenty-nine were yellow fever. Of the latter eleven proved fatal.

It is gratifying in this connection to state that the National Board of Health, after careful investigation of the methods in vogue at the different ports, unanimously recommended the principles and modes practiced at the port of New York, as affording the greatest protection against disease and the least interference with the freedom of commerce.

## RAILROAD TRANSPORTATION.

For several years there has been an increasing interest in the subject of railroad transportation. The relations of railroads to the public are of vast importance and demand careful examination by the Legislature. In its inter-State aspect the subject can only be treated by Congress. But the internal interests of the people of this State, comprising one-tenth of the population of the Union, must depend upon local legislation. Responding to popular sentiment, the last Assembly appointed a special committee to investigate the management of the railroads, with instructions to report to the next Legislature. The members of the committee have devoted themselves assiduously to this duty, and will, in due time, present their conclusions for your consideration.[9]

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[8] See 1876, note 18, citing Henderson v. Mayor of New York, 92 U. S. 259, *ante*, vol. 6, pp. 997–1001.

The question of railroad transportation affects directly or indirectly every industrial and commercial interest; and the public have the right to demand that freight tariffs shall be uniform for like service, without discrimination as between citizens or communities, and that they shall also have all reasonable publicity. This should be secured by just and practical regulations.

## ELECTION LAWS.

The foundations of free government rest upon the purity of the ballot. Every elector is entitled to have his vote honestly counted and to be protected from all fraudulent practices in the conduct of elections. This is the vital element of National life, and in many respects it is the most difficult to shield from abuse. All enactments, whether National or State, calculated to protect the freedom and integrity of the elective franchise, are earnestly to be commended.

In consequence of enormous election frauds perpetrated in the city of New York in former years, very effective laws have been enacted for that locality. But in other cities defective statutes are still in operation, and in some of them elections are conducted in a grossly fraudulent manner. Remedy has heretofore been sought in more perfect legislation, but obstacles have arisen to defeat the desired object. A well-guarded registry law for all incorporated villages is also believed to be necessary for the correction of existing evils. In view of the importance which these subjects bear to the highest interests of the people, it is hoped they will receive your early consideration.[10]

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[9] The report of the railroad investigating committee was presented to the Assembly on the 2d of March, 1880. [See Assembly Document No. 66.]

## EXCISE LAWS.

Much dissatisfaction prevails in regard to the Excise laws, and it is essential that some effort be made to render them more effective. The laws are constantly violated or evaded, and inadequate attention is given to their enforcement. Indeed, the chief difficulty seems to be to determine the scope or meaning of the existing statutes on this subject. Under recent and somewhat conflicting decisions, Excise Commissioners are left with large discretionary powers. The will of the commissioners is substituted for the mandates of law, hence conflicting interpretations obtain within the jurisdiction of the different boards of Excise. What is needed is a carefully matured act that can be plainly understood and faithfully executed. Although beset with difficulties, it is your duty to seek an intelligent solution of the matter.

## HARBOR MASTERS.

The Supreme Court of the United States having declared that portion of the law of the State unconstitutional which authorizes the collection of fees by Harbor Masters, these officers are left to perform important duties without legal remuneration.[d] If the services rendered by them are to be continued, it will be necessary for the Legislature to provide for their compensation in some different form.

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[10] Chapter 56, passed March 11, "to promote honest elections," required election officers to possess certain educational qualifications, provided for watchers at polls, regulated size of room in which elections were to be held, and contained other important provisions concerning elections and the duties of election officers.

Chapter 142, passed April 22, provided for the registration of voters in towns in a county containing 300,000 inhabitants.

Chapter 366, passed May 24, was intended to secure uniform ballots and preserve the purity of elections. It prescribed the form of ballot to be used at elections, and prohibited the use of other ballots except in special cases.

Chapter 576, approved June 22, provided for the registration of voters in cities containing 16,000 inhabitants, and in towns abutting on such cities.

## PILOTAGE.

The laws relating to pilotage in the harbor of New York cause much complaint from those engaged in commerce. It is represented that the legal charge for piloting a large steamship in and out of that port is larger than the wages of the captain for the round European trip. If this be true, a remedy is surely needed. The growing competition of other seaports for our vast foreign trade renders it imperative that the commerce of New York shall be relieved of all unnecessary burdens. The future prosperity of the State is largely dependent upon the continuance of our commercial supremacy, and no private interest should be permitted to interfere with that great object.[11]

## INDIANS.

Attention has been called to the condition of the Indians still remaining within the limits of the State, more especially those residing on the Onondaga reservation. According to the representations of well-informed citizens, there seem to be ample reasons for the adoption of such measures as will conduce to the moral and material welfare of this peculiar people. Much must necessarily depend in this direction upon the exercise of wise and beneficent influences; but as the State has long sustained the relation of guardian to the remnants of Indian tribes within its domain, the interests involved in their situation are commended to your thoughtful consideration.[12]

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[d] See Inman S. S. Co. v. Tinker (1876), 94 U. S. 238.

[11] See special message of March 9, transmitting Connecticut memorial relating to Hell Gate pilotage.

[12] Chapter 184, passed May 6, imposed severe penalties against the bribery of officers of the Seneca Nation of Indians.

## LOCAL INDEBTEDNESS.

Serious embarrassment exists in different sections of the State on account of the large amount of town indebtedness incurred for the most part in aid of railroad enterprises. In some instances towns are being depopulated in consequence of the high rate of taxation rendered necessary to pay the interest on their bonds. The value of property is also depreciating; and looking forward to the maturity of the debt, the prospect becomes still more discouraging. The only remedy seems to be in refunding the indebtedness, so as to reduce the rate of interest. This, however, requires an improved credit; and it is very desirable that some measure be devised, if possible, to enable the towns to accomplish this object.[13]

## MUNICIPAL AFFAIRS.

Municipal affairs are prolific subjects of legislation and will doubtless occupy much of your attention. In dealing with them it should be remembered that the restoration of specie payments affords a favorable opportunity for the readjustment of public expenditures, many of which, established during the period of inflation and fixed at rates now extravagant, have become needless burdens upon the taxpayers. Especially is this true in the city of New York. Overburdened with debt largely created by the criminality of faithless officials, the expenses of the city government should be reduced to a frugal and economical basis.

All measures calculated to simplify the methods and promote the stability of local as well as State administration, or secure efficient and economical discharge of official duty are earnestly commended to your favorable consideration and support.

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[13] Chapter 12, passed February 14, authorized towns and other municipal corporations, to refund their bonded indebtedness by the issue of new bonds.

### CONCLUSION.

We enter upon our duties under circumstances which mark an interesting event in the history of the State. For the first time since the organization of our State government in 1777, the executive officers and the members of both branches of the Legislature were chosen simultaneously at the recent election. A trust of unusual magnitude, therefore, is committed to us, for the faithful performance of which we shall justly be held to strict accountability.

Commissioned as the representatives of a grand constituency, unequaled in enterprise, wealth, and power, may we be impressed with the gravity of our responsibilities, and solemnly resolve to be guided by worthy motives in every official action.

ALONZO B. CORNELL.

## SPECIAL MESSAGES.

January 16. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *January* 15, 1880.

"You are herewith presented with the report of the agent of the State, appointed by my predecessor pursuant to the provisions of chapter 134 of the Laws of 1878, in relation to infectious and contagious diseases of animals.

It will be observed that the sum heretofore appropriated for this purpose has been exhausted and liabilities have been incurred amounting to about $16,000. In view of this fact, it has seemed proper for me to direct the suspension of all work and expense until the Legislature shall have taken action, notwithstanding the urgent representation of the Secretary of the State Agricultural Society of the necessity of continuing the work. Your early attention to the subject is respectfully directed.[14]

ALONZO B. CORNELL."

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[14] **Chapter 11, passed February 14, appropriated $30,000 for the purpose of carrying out the provisions of chapter 134 of the Laws of 1878, and chapter 306, of the Laws of 1879, and for liquidating and discharging all obligations incurred thereunder by the agents of the State.**

January 26. To the Assembly: Transmitting the report of the acting captain of the port of New York of the fees collected by him in the year 1879.

January 26. To the Assembly: Transmitting the annual report of the trustees of the Cooper Union.

February 16. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *February* 16, 1880.

"The Revised Statutes provide that the Governor shall be the keeper of the Great Seal of the State. In practice, however, the Secretary of State is the actual keeper of the Great Seal, and the custom for many years has been for the Governor to sign certificates in blank, to be issued by the Secretary of State in due form, when required.

In order, therefore, that the law may be made to conform to the established usage and place the responsibility for the correctness of official papers upon the officer who really executes them, it is recommended that the statute be so amended as to make the Secretary of State the official custodian of the Great Seal.

The change of the law will relieve the Governor of an onerous but useless duty, and simplify the form of official action to which it relates.[15]

ALONZO B. CORNELL."

March 1. To the Assembly:

**Veto of a bill entitled "An act to amend chapter 863 of the Laws of 1873, entitled 'An act to amend the charter of the city of Brooklyn, and the various amendments thereof.'"**

"The object of the bill is to extend the term for which constables in the city of Brooklyn shall be elected, from one to two years. In my opinion these officers should remain as at present, subject to the review of their constituencies at each annual election."

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[15] Chapter 86, passed March 31, amended the Revised Statutes by making the Secretary of State the custodian of the great seal of the State. The Governor was to be the custodian of the privy seal.

The bill was not passed over the veto.

March 3. To the Assembly:

**Veto of a bill entitled "An act to amend chapter 686 of the Laws of 1872, entitled 'An act to amend an act entitled 'An act to erect the village of Middleburgh into a separate road district, and the several acts amendatory thereof.'"**

"Section 18 of article 3 of the Constitution, and the laws passed in pursuance thereof, give the boards of supervisors full jurisdiction over the subject of road districts. It is believed, therefore, that this bill is quite unnecessary, if not actually in conflict with the constitutional provisions on the subject."

The bill was not passed over the veto.

March 4. To the Assembly:

**Veto of a bill entitled "An act to amend chapter 353 of the Laws of 1878, entitled 'An act in relation to the term of office of clerk and assistant clerk of the Board of Supervisors of Kings County, and of the engineers of the county court-house in said county.'"**

"Existing laws confer upon the board of supervisors all requisite power for the employment of persons for the transaction of necessary business. This bill arbitrarily directs the supervisors of Kings county to elect an additional clerk and messenger. In my opinion it ought not to become a law."

The bill was not passed over the veto.

March 5. To the Assembly:

**Veto of a bill entitled "An act conferring additional powers upon the Board of Supervisors of the county of Niagara, relative to expenses for the support of the poor."**

"The object of the bill is to take from the superintendent of the poor the powers and duties given by the general laws of the State, and to transfer them to the supervisors. This is manifestly unwise and improper."

The bill was not passed over the veto.

March 9. To the Assembly: Transmitting a memorial and resolution of the General Assembly of the State of Connecticut, passed March 5, 1880, relating to the law of this State regulating Hell Gate pilotage.

The memorial complained that under the operation of the New York statute, masters of coastwise vessels, passing Hell Gate, were required to pay half pilotage fees if demanded by a pilot, although a pilot's services were not accepted nor required. The memorial set forth at length reasons for objecting to the statute, and requested its repeal.[16]

March 16. To the Assembly: Transmitting the annual report of the Sailors' Snug Harbor.

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[16] This subject was considered by the Legislature of 1881, by which a bill was passed reorganizing the department of pilots, providing for their appointment by the Governor and Senate, and regulating their fees. The provisions of the statute complained of by the Connecticut Legislature were materially modified, and the payment of fees was not to be compulsory if the vessel or tug boat had on board a licensed United States pilot, and the act did not apply to vessels of less than one hundred tons burden. Governor Cornell vetoed the bill [see veto message May 17, 1881]. The bill was not passed over the veto, but another bill relating to Hell Gate pilotage was passed and became chapter 493 on the 13th of June. This act provided that "no pilotage shall be charged to any vessel under a coasting license on entering or departing from the port of New York by way of the East river, called Hell Gate," unless such vessel actually employs a pilot, and all inconsistent acts were repealed. This was a substantial compliance with the request made by the Connecticut Legislature.

March 22. To the Assembly:

**Veto of a bill entitled "An act to amend chapter 555 of the Laws of 1864, entitled 'An act to revise and consolidate the general acts in relation to public instruction.'"[17]**

"The present law provides that the county treasurer shall pay to the trustees of school districts the amount of taxes returned as uncollectible. The amendment proposed by this bill provides that the money shall be paid by the treasurer to the collector of the district on the written order of the trustees. As the trustees are the proper custodians of the money, it seems to me that the change proposed is not wise."

March 29. To the Assembly:

**Veto of a bill entitled "An act to release all that part of the waters of Lake Ontario, together with its bays and inlets, in the county of Jefferson, and in that part of Oswego county, lying between its Jefferson County line and the western line of the town of Mexico, saving and excepting the Henderson harbor and bay, and within one half mile of the outlet or mouth of Salmon River, from the operation of the provisions of sections 23 and 26 of chapter 534 of the Laws of 1879, entitled 'An act for the preservation of moose, wild deer, birds, fish and other game.'"[18]**

"The preservation of game and fish has been for many years a perplexing subject of legislation. The last Legislature enacted a carefully prepared and comprehensive statute to supersede the many and conflicting laws then in force, which was intended as a relief from the constantly recurring demands for special legislation in this respect.

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[17] The bill relating to delinquent school taxes was not passed over the veto, but another act on the same subject was passed, and became a law, chapter 455, on the 27th of May. The act provided for the payment to school trustees of amounts remaining uncollected on a tax warrant.

[18] The bill was not passed over the veto, but another bill on the same subject was passed, and became a law, chapter 531, on the 31st of May. The act included the waters described in the original bill, and also other waters in different parts of the State, all of which were released from the operation of sections 23 and 26, of the fish and game law of 1879, chapter 534.

The object of this bill is to release a limited portion of the waters of Lake Ontario from the operation of this act. If there be any reason for exempting this section there are probably equally good reasons for the exemption of other localities; and it may be expected, should this bill take effect, that it will prove only the forerunner of others of like character. If the present law is not satisfactory it should be made so by some general amendment or repealed altogether. To begin now by releasing one or more localities from its provisions would, in my opinion, be unwise and impolitic."

April 8. To the Assembly:

**Veto of a bill entitled "An act to provide for the appointment of additional notaries public."**

"Existing laws provide for the appointment of 11,674 of these officers in the State, being an average of 91 for each Assembly district which, in my opinion, is more than sufficient for the convenience of the people.

It is impossible even now to give adequate attention to the fitness and qualifications of persons proposed for appointment as notaries public, and it is my belief that the number should be diminished rather than increased."

The bill was not passed over the veto.

April 28. To the Senate:

"Executive Chamber,
Albany, *April* 28, 1880.

Your attention is respectfully called to the accompanying letter of the comptroller charging Alvin Devereux, William S. Smith, Edward D. Van Slyck, Garvis Prince, William E. Knight, Samuel D. Halliday, Rodney A. Ford, Erastus Ross and Frederick O. Cable, as Trustees of the

Binghamton Asylum for the Chronic Insane, appointed pursuant to chapter 280 of the Laws of 1879, with violations of law and extravagance in the management of the official trust confided to them, in the manner and instances set forth and specified therein. The report of the deputy comptroller and president of the State Board of Charities in reference to the same subject is also herewith submitted.

Assuming from the official reports above mentioned that the charges referred to are true, you are hereby recommended to remove the said Alvin Devereux, William S. Smith, Edward D. Van Slyck, Garvis Prince, William E. Knight, Samuel D. Halliday, Rodney A. Ford, Erastus Ross and Frederick O. Cable as trustees of the said asylum.[19]

ALONZO B. CORNELL."

[See Senate Document No. 50.]

May 4. To the Senate:

**Veto of a bill entitled "An act to prohibit the construction of buildings of wood or other combustible materials in a certain portion of the city of New York."**

"This bill provides that 'No exterior wall or roof of any dwelling house or other building' hereafter erected in the city of New York, west of Eighth avenue, between 59th and 125th street, 'shall be constructed in whole or in part of wood or other combustible material.' The probable intent is that the outer walls and covering of the roofs shall not be of wood or other combustible material. Unfortunately, however, the language employed does not clearly express this meaning, and is, therefore, capable of a different interpretation.

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[19] On the 29th of April a committee of the Senate was appointed, composed of three members, to investigate the charges against the trustees of the Binghamton Asylum for the Chronic Insane. On the 26th of May, the committee presented its report, sustaining in several particulars the charges made by the Comptroller, and declaring in substance that the trustees had been guilty of a violation of law. On the same day a resolution for the removal of the trustees was rejected by a vote of 15 to 16.

In a measure which so seriously affects private rights for the public good, as the bill under consideration, especial care should be taken to clothe the enactment in plain and unmistakable language which will not require judicial decision to determine its meaning. Otherwise the citizen will be rendered liable to imposition and annoyance from the unreasonable exactions of petty officials."

The bill was not passed over the veto.

May 4. To the Senate:

**Veto of a bill entitled "An act to amend chapter 37 of the Laws of 1855, entitled 'An act amendatory of the acts for the assessment and collection of taxes.'"**

"The necessity of a revision of the laws for the assessment and collection of the public revenue is fully appreciated, and it is my sincere desire to co-operate with the Legislature in maturing any measure which will insure a more equitable distribution of the burden of taxation.

The present bill would not, in my opinion, promote this object. On the contrary, it would fail to produce any material revenue, and would tend to drive from the State a large amount of capital which in times of financial stress is sent here for temporary use, thereby giving great relief to the borrowing classes and affording additional facilities for commercial transactions. Our great metropolis has become one of the principal financial centers of the world, and within a few years has attracted vast amounts of capital from other countries, the use of which has to a great extent modified the rate of interest in the State.

Were this bill to become a law, the first result would be to deprive our people of the benefits derived from the influx of this foreign capital, which would seek other markets and thus increase the commercial facilities of rival cities."

The bill was not passed over the veto.

May 10. To the Assembly:

**Veto of a bill entitled "An act for the preservation of fish in the waters of Loon Lake, in the county of Steuben."**

"The object sought to be attained by this bill seems to be abundantly provided for by chapter 534 of the Laws of 1879. If any remedy is necessary beyond what that statute furnishes, the board of supervisors of Steuben county is authorized by chapter 482 of the Laws of 1875 to provide it.

The constitution provides against certain specific local legislation, and then declares that 'the Legislature shall pass general laws providing for the cases enumerated in this section, and for all other cases which in its judgment may be provided for by general laws.'* The Legislature has, in obedience to this injunction, enacted very complete and effective general laws for the preservation of fish and game, and it would seem to be antagonistic to the spirit of the Constitution to fill up the statute books with local laws on the same subject."

The bill was not passed over the veto.

May 14. To the Assembly:

**Veto of a bill entitled "An act to prohibit the mayor and common council of the city of Brooklyn from authorizing any railroad corporation to construct its road upon any portion of Water Street in said city, not named in the charter of such railroad corporation."**

"The object of this bill is to take from the mayor and common council of the city of Brooklyn authority vested in them by chapter 585 of the Laws of 1874, to change the route of the elevated railway created by that act, to streets which they should deem more suitable for carrying out the objects contemplated therein.

The consideration of a change of the route is now pending in the common council, and it cannot be doubted that the members of that body are quite competent to deal with the question intelligently. They have full opportunity to examine the subject in all of its details, and should be permitted to act upon it according to the merits of all interests involved.

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* Const. 1846, art. 3, § 18, added 1874.

The case would be very different if the common council had not already proceeded to act under the existing authority. If it were merely a question of changing the conditions under which the mayor and common council might act, before taking cognizance of the matter, there could perhaps be no serious objections to the proposition. In view of the present circumstances, however, it seems to me interference with the pending action of the local authorities is wholly unwarranted."

The bill was not passed over the veto.

May 17. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *May* 17, 1880.

"It is my painful duty to announce to the Legislature the death of the Chief Judge of the Court of Appeals. On Friday, the 14th instant, at his home in the village of Albion, Sanford E. Church passed from this life, without note or warning. Almost in the twinkling of an eye the strong man was summoned while in active discharge of his judicial duties, into the presence of his Maker, the Great Judge of all. The tidings of his death have been everywhere received by the people with profoundest sorrow. Expressions denoting a deep sense of the great loss that has befallen the State are universal and unchallenged.

For nearly forty years Judge Church has been a conspicuous figure in the public affairs of the State. Possessing superior ability, an untiring devotion to duty, combined with high character and unquestioned integrity, he early secured the confidence of the people, and maintained it throughout his long and eventful career. Positive, fearless and consistent in his political course, and faithful to those who shared his views, he merited and enjoyed the favor of his party in a remarkable degree. In official service his record is an enviable one. As member of the Assembly, District Attorney, Lieutenant-Governor, Comptroller, member of the Constitutional Convention, and Chief Judge of the Court of Appeals, he acquitted himself with unusual credit. In every capacity or association he uniformly proved himself to be a leader of men. At the bar, in the councils of his party, and in all deliberative bodies, he occupied a place in the front rank, wielding an influence inferior to none, and equaled by few. In social life, his genial manners made him always a welcome guest, while the purity of his private life and the happiness of his domestic relations present a symmetry of character and an example worthy of emulation.

Called by the people to preside over our highest court just ten years ago to-day, Judge Church discharged his great trust with eminent success and fidelity. His former partisanship caused him, perhaps, in the beginning to be distrusted by many of opposite political opinions, but his impartiality and patriotic bearing soon dispelled every doubt; and it can now be truthfully said that never in the history of our State has the Appellate Court enjoyed the confidence of the people in a higher degree than during the period of his service as the presiding judge.

The awful suddenness with which this distinguished career has been arrested furnishes an admonition which we may well heed. By this mysterious dispensation of Providence should we not be warned again of the uncertainty of life? Although sudden deaths are of almost daily occurrence, it is only when a prominent life is thus removed that we pause for contemplation. Seldom is the nearness of the dreaded messenger so forcibly illustrated as in this instance. In a single hour this learned man, devoting his mind to the solution of legal questions, is changed into inanimate clay! A happy family, secure in the affections of a kind husband and fond parent, is plunged into the deepest affliction and bereavement!

Believing that the eminent character and distinguished public services of this statesman and jurist render his memory worthy of especial consideration, you are recommended to take such action as shall seem appropriate, and to make suitable record of the appreciation by a grateful people of the devoted and intelligent labors of a faithful public servant.[20]

ALONZO B. CORNELL."

May 24. To the Assembly:

**Veto of a bill entitled "An act authorizing the enlargement of the West Branch of the Eighteen Mile Creek north of the Erie canal, in the county of Niagara, so as to carry off the surplus waters of the Erie canal, and to prevent the overflow of lands adjacent thereto, and appropriating money for that purpose."**

"This bill proposes to authorize the Superintendent of Public Works to enlarge the west branch of the Eighteen Mile creek near Lockport, to enable it to discharge the surplus waters of the Erie canal and prevent the overflow of lands lying adjacent thereto. The bill makes an appropriation of $6,000 to pay the expense of the proposed work.

Since the bill has been in my hands, the Superintendent of Public Works has, at my request, personally visited and carefully inspected the locality named, to enable him to determine as to the necessity of the proposed improvement. He expresses the opinion that the work is unnecessary, and that the State cannot properly be called upon to make an expenditure for the purpose indicated.

It is, therefore, my opinion that the bill should not become a law."

The bill was not passed over the veto.

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[20] Each house adopted resolutions of condolence on the death of Chief Judge Church, and appointed a committee to attend his funeral.

Chapter 475, passed May 28, appropriated to Mrs. Ann Church, widow of the late Chief Judge Church, $5,990.26, the amount of the salary which would have been earned by him had he lived until the 1st of January, 1881.

May 25. To the Senate:

**Veto of a bill entitled "An act in regard to markets, and the rebuilding of the same, in the city of New York."**

"The mayor of the city of New York, the comptroller and dock commissioners urgently express themselves in opposition to the provisions of this bill. It is also opposed by a large number of prominent citizens who urge that the moderate expenditure authorized is but the beginning of a work which will require much larger sums hereafter to complete it. In view of the fact that every public officer of the city, who has made any representation on the subject, has condemned the bill, it seems to me it should not become a law. If the proposition has the merit which its friends claim, no harm will be done by postponing its consideration until some future day, when it may be acted upon with more intelligence than at present."

The bill was not passed over the veto.

May 27. The Legislature adjourned without day.

## MEMORANDUMS FILED WITH BILLS APPROVED BEFORE ADJOURNMENT OF THE LEGISLATURE.

April 7.

**Memorandum filed with Senate bill, chapter 105, "to provide for the completion and opening for public travel of the New York and Brooklyn bridge, and to authorize the sale and conveyance of certain gores and pieces of land by the trustees thereof."**

"Careful consideration, and the representations of the Mayors and Comptrollers of the cities of New York and Brooklyn, convince me that this bill should become a law, whereas if it were a new question, it could not receive my approval. Under legislation in various years since 1867, the construction of this bridge has proceeded until $12,-

400,000 have already been expended upon it, which would be worse than wasted if the bridge be not completed. It is represented to me that, of the $2,250,000 appropriated by this bill to complete and open the bridge for traffic, about $1,000,000 are required to complete contracts made during the past year, which, owing to the subsequent advance in the price of material, could not now be placed at less than fifty per cent advance, and that the Commissioners must have the means in hand before the first of May, proximo, to enable them to hold these contracts. In the belief, therefore, that the public interests of the two cities will be promoted by this additional investment, my approval to the bill has been given."

April 10.

**Memorandum filed with Assembly bill, chapter 117, "for the relief of persons who performed the duties of clerks and assistant clerks of district courts in the city of New York, in the year 1876."**[21]

"A bill similar in its object having been vetoed by my predecessor, under date of March 19, 1877, has caused me to give especial attention to the propriety of this bill becoming a law.

The persons for whose benefit relief is sought were appointed clerks and assistant clerks by Justices of District Courts in the city of New York, in January, 1876, under chapter 438 of the Laws of 1872. They entered upon the discharge of their duties and devoted their time to the service of the city. There appears no doubt that the Justices in making the appointments, and the clerks in accepting the same, were sincere in their belief as to the validity of their action. The legality of the appointments was contested by the previous incumbents in an appeal to the courts, which resulted, in the first instance, by judgment of the Court of Common Pleas, in favor of the appointees. This verdict, however, was reversed by the General Term, and the reversal was finally affirmed by the Court of Appeals, thus restoring the previous incumbents to their places. The litigation covered nearly or quite the whole of the year 1876, during which period the duties were performed by the new appointees; but under the final judgment of the courts the salaries were of course, paid to their contestants.

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[21] For cases involving the construction of statutes relating to clerks of district courts in New York, see Whitmore v. Mayor (1876), 67 N. Y. 21; People ex rel. Healy v. Leask (1876), 67 N. Y. 521.

It is admitted that these persons are unable to maintain an action against the city for their services, and hence it may be said they have no legal standing as claimants for compensation. It is certain, however, that the Legislature and the courts have repeatedly provided for the payment of equitable claims which could not be sustained as legal obligations.

Chapters 275 and 300 of the laws of 1876, approved by Governor Tilden, and granting relief respectively to Cornelius Flynn and Patrick McCabe, are identical in purpose with this bill. Both persons named had been appointed assistant clerks of District Courts in the city of New York, under the same act precisely, as those claiming compensation in this case, and deposed under similar circumstances.

The Court of Appeals, September, 1855, in the case of the town of Guilford against the Board of Supervisors of Chenango county,[f] declared, in an opinion by Judge Denio, that ' the Legislature has power to levy a tax upon the taxable property of a town and appropriate the same to the payment of a claim made by an individual against the town. Nor is it a valid objection to the exercise of such power that the claim to satisfy which the tax is levied is not recoverable by action against the town.'

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[f] 13 N. Y. 143.

In the same court, in January, 1874, in the case of the town of Duanesburgh *versus* Jenkins,[g] Judge Johnson says: 'A town is, as to the powers it shall possess and the functions it shall perform, the creature of the Legislative will. * * * The power to impose special burdens upon localities, and to determine the cases in which it is suitable to impose them, belongs to the law-making power.'

The same court, at the same term, in the case of the People ex rel. Williams *versus* Dayton,[h] by Judge Andrews, declared, 'Nor is the Legislature restricted in granting relief to such grounds as would be requisite to maintain an action against an individual in courts of justice. Many other considerations may and often should be considered in the dealings of a State with its citizens.'

It being clear that the persons to whom relief is granted by this bill were *de facto* clerks, and as such performed all the functions, their title to office also affirmed in the outset by a decision of the Court of Common Pleas, there can be no reasonable question of an equitable claim for their services. The legislative precedents cited, and the several declarations of the highest court in the State as to the power of the Legislature to grant relief in equity cases, justify, in my opinion, the approval of this bill."

April 20.

**Memorandum filed with Senate bill, chapter 138, entitled "An act making an appropriation to continue the work on the New Capitol building."**

"This bill, appropriating $1,500,000 for the continuation of work on the Capitol, has been retained in my hands the full constitutional period, in order that opportunity might be given for any expression of opposition to the measure. Not a word of disapproval has reached me from any source. My own view in reference to the continuation of this work was stated in the annual message, and it was hoped that provision would be made to submit a proposition to the people for a loan to complete the edifice. The Legislature, however, in its wisdom, has determined that the necessary funds should be provided by taxation. As no alternative remains for me but to approve or disapprove this bill, the former course is adopted in the belief that the best interests of the State require the early completion of the Capitol."

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[g] 57 N. Y. 177.

[h] 55 N. Y. 367.

## THIRTY-DAY BILLS.

June 1.

**Memorandum filed with Assembly bill, chapter 542, entitled "An act to provide for raising taxes for the use of the State upon certain corporations, joint stock companies and associations."** [22]

"This bill is approved, although it is feared that for want of perfect and comprehensive provisions it may fail to accomplish all that it was evidently intended to do. The exemption of street railroads from taxation is wrong and unjustifiable; but this is not deemed of sufficient importance to warrant the withholding of my approval. It should be remedied by the next Legislature."

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[22] Important amendments to this act were made in 1881, by chapter 361, passed May 26, and by subsequent statutes. The subject was included in the tax law, L. 1896, chapter 908.

Chap. 542, 1880, amended 1881, chap. 361; 1882, chap. 151; 1885, chap. 501, was sustained in People v. National F. Ins. Co. (1882), 27 Hun 188; People v. Home Ins. Co. (1883), 92 N. Y. 328, affirmed in (1886), 119 U. S. 129; People v. New York Floating Dry Dock Co. (1883), 92 N. Y. 487; People v. Equitable Trust Co. (1884), 96 N. Y. 387; People v. Horn Silver Min. Co. (1887), 105 N. Y. 76, affirmed in (1891), 143 U. S. 305; People ex rel. Platt v. Wemple (1889), 117 N. Y. 136; People ex rel. Southern Cotton Oil Co. v. Wemple (1892), 131 N. Y. 64; People ex rel. Dunkirk A. Valley & P. R. Co. v. Campbell (1893), 74 Hun 210.

1881, chap. 361, was sustained in People v. Gold & S. Teleg. Co. (1885), 98 N. Y. 67.

1889, chaps. 193, 383, amending the former statutes, was sustained in New York v. Roberts (1898), 171 U. S. 658, affirming (1896), 149 N. Y. 608 (1895), 91 Hun 158.

June 4.

**Memorandum filed with Assembly bill, chapter 545, entitled "An act to amend chapter six hundred and sixty-three of the laws of 1875, entitled 'An act to amend the charter of the city of Brooklyn, being the act for that purpose passed June 28th, 1873, and the act for that purpose passed June 1st, 1874.'"**

" The bill is unfortunate in form, and has been approved with great reluctance for that reason. In its reference to the act which it amends, the phrase ' subdivision ' is used in several places, when it is evident that the word ' section ' should have been used. Careful comparison with the act amended renders it clear, however, as to what was the intention of the Legislature. The object of the bill seems meritorious; and it is, therefore, approved in the belief that it will improve the administration of the health department of Brooklyn."

June 7.

**Veto of the following items in the canal appropriation bill, chapter 548:**

" Each and every of the several items herein enumerated * * * are objected to, and not approved, for reasons stated below.

'Authority is hereby conferred upon the Superintendent of Public Works to expend out of the sum apportioned for the payment of the expenses of lock-tending and the ordinary repairs of the canals, the following sums for the purposes herein designated, and all or any part thereof remaining unexpended, may be applied by him in his discretion to the ordinary repairs of the canals:

For dredging out the Ohio basin, in the city of Buffalo, the sum of nine thousand dollars, or so much thereof as may be necessary.

For dredging out the Erie basin, in the city of Buffalo, the sum of ten thousand dollars, or so much thereof as may be necessary.

For perfecting the culvert under the Erie canal, at Brockport, sufficient to carry off the surplus water in time of flood, one thousand dollars, or so much thereof as may be necessary.

For opening, straightening and cleaning out the channel of the Eighteen Mile creek, which carries off the surplus waters of the Erie canal by culvert and waste-weir, near Mabee's, in the town of Royalton, Niagara county, the sum of three thousand dollars, or so much thereof as may be necessary.

To pay an award by the Canal Appraisers on the nineteenth day of March, eighteen hundred and eighty, in favor of Harriet Jenkins, the sum of seven hundred and twenty-five dollars and fifty-five cents is hereby appropriated, payable on the warrant of the Auditor, out of any unexpended moneys in the treasury, belonging to the canal fund and applicable therefor.

For excavating a ditch on the berme side of the Erie canal, between the first culvert east of Jordan, and the culvert near the Shanty Point bridge, the sum of eight hundred dollars, or so much thereof as may be necessary.

For cleaning out the State ditches in the northern part of the town of Amherst, Erie county, between the Eighteen Mile creek and Tonawanda creek, the sum of five thousand dollars, or so much thereof as may be necessary.

For the construction of a swing, hoist, or turn-table bridge, over the Oswego canal, in the city of Syracuse, on Salina street, at its intersection with Bridge street, in place of the bridge now over said canal at that point, which was authorized by chapter three hundred and eighty-two of the laws of eighteen hundred and seventy-four, the sum of twelve thousand dollars, or so much thereof as may be necessary.

For extending sewer under the Erie canal and to Squaw island, at Black Rock, in the city of Buffalo, according to plans and specifications of the State Engineer and Surveyor, the sum of twenty thousand dollars, or so much thereof as may be necessary.

For cleaning out, excavating the bottom, repairing the banks and dam, and for deepening the channel at such points as may be deemed necessary by the Superintendent of Public Works, of the Tonawanda dam and feeder, to the Erie canal, in the county of Orleans, the sum of four thousand dollars, or so much thereof as may be necessary.

For raising and repairing road bed, in the town of Fort Ann, pursuant to chapter five hundred and forty-four of the laws of eighteen hundred and seventy, the sum of fifteen hundred dollars, or so much thereof as may be necessary.

For the drainage of lands belonging to Isaac U. Cole, situate in the town of Murray, Orleans county, near McGuire's bridge; the drainage of which is cut of by the Erie canal, by cleaning out and extending a ditch made by the State for such drainage or by such other method for drainage, the same as the Superintendent of Public Works may deem best, the sum of one thousand dollars, or so much thereof as may be necessary.

The unexpended balance of the sum appropriated by chapter four hundred and thirty-six of the laws of eighteen hundred and seventy-nine, being the sum of seven thousand seven hundred and ten dollars and twenty-eight cents, to be applied as follows: For building a dam across Beaver river and across Independence river. The balance of said sum to be expended in the discretion of the Superintendent of Public Works, in restoring to the Black river its natural supply of water, and for the improvement of the navigation and for the benefit of the Black river canal.'

All of the several items above enumerated are objected to, and not approved, for the reason that the Superintendent of Public Works already possesses abundant authority of law for all expenditures for the canals which can be made in conformity with the Constitution. If any of the objects named in these several items are legitimate charges against the canal funds, they can be provided for by the Superintendent without the enactment of the discretionary authority above given. If they do not come within this category, the items should not be incorporated in the law."

June 7.

**Veto of the following items in the supply bill, chapter 549:**

"'For the commissioners of fisheries, to be expended as they may deem proper, upon vouchers to be approved by the Comptroller, for the purpose of replenishing the lakes and rivers of this State with fish, the sum of fifteen thousand dollars.'

This item is objected to, and not approved, for the reason that in my opinion abundant provision has already been made for the purpose indicated. Appropriations for restocking the waters of the State with fish have been made heretofore, as follows:

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|---|---|
| 1868 | $1,000 |
| 1869 | 10,250 |
| 1870 | 15,000 |
| 1871 | 15,000 |
| 1872 | 15,000 |
| 1873 | 15,000 |
| 1874 | 10,000 |
| 1875 | 15,000 |
| 1876 | 15,000 |
| 1877 | 15,000 |
| 1878 | 15,000 |
| 1879 | 15,000 |
| Total | $156,250 |

It will thus be seen that appropriations for this object, which were evidently intended in the beginning as temporary, have become chronic, and unless interrupted, are likely to become permanent by precedent. The present seems to be a good time to suspend this expense, at least until the necessity for its continuance shall become more apparent.

'For George A. Martinus, for services as messenger to the Committees on Judiciary and Miscellaneous Corporations of the Senate, for the session of eighteen hundred and eighty, at four dollars per day, the sum of five hundred and fifty dollars, or so much thereof as may be necessary.'

This item is objected to, and not approved, for the reason that the employes of the Legislature are regulated by chapter 379 of the laws of 1879, which provides that 'No additional officers or employes shall be elected or appointed by the Senate or Assembly' beyond those named in the act. No 'Messenger to the Committees on Judiciary and Miscellaneous Corporations of the Senate' is provided for, hence the appointment of such an employe could not have been legally made, and no appropriation should have been made for this purpose.

'For Edward M. Johnson, for preparing the appendix to the Clerk's Manual, pursuant to resolution of the Assembly, adopted May twenty-fourth, eighteen hundred and seventy-seven, three hundred dollars.'

This item is objected to, and not approved, for the reason that it is questionable in my mind, whether the Legislature is competent to provide for such a payment. The same item was stricken out of the Supply bill in 1878, by objection of the Governor, for reasons stated at length. If it is a valid claim against the State it should be passed upon by the Board of Audit.

'For preparing and classifying under appropriate heads for the use of the Legislature, an index to papers on file in the Assembly from eighteen hundred and seventy-three to eighteen hundred and seventy-seven inclusive, pursuant to resolution of the Assembly adopted May twenty-fourth, eighteen hundred and seventy-seven, seven hundred and fifty dollars.'

This item is objected to, and not approved, for the same reason as that stated in objection to the preceding item.

'And for preparing under appropriate headings a complete index to the laws of the State from eighteen hundred and seventy-five to eighteen hundred and seventy-seven inclusive, pursuant to resolution of the Assembly adopted May twenty-fourth, eighteen hundred and seventy-seven, one thousand dollars.'

This item is objected to, and not approved, for the same reason as that stated in objection to the preceding item.

'For William H. Barker, for preparing and classifying under appropriate headings under the direction and supervision of the Clerk of the Assembly, an index to all bills presented to the Assembly and not acted on therein, from eighteen hundred and seventy-three to eighteen hundred and seventy-seven, both inclusive, pursuant to resolution of the Assembly adopted May twenty-fourth, eighteen hundred and seventy-seven, six hundred and seventy-five dollars.'

This item is objected to, and not approved, for the same reason as that stated in objection to the last preceding item.

'And for preparing and classifying under appropriate headings, under the direction and supervision of the Clerk of the Assembly, a complete index to all bills printed during the years eighteen hundred and seventy to eighteen hundred and seventy-seven, both inclusive, pursuant to resolution of the Assembly adopted May twenty-fourth, eighteen hundred and seventy-seven, one thousand dollars.'

This item is objected to, and not approved, for the same reason as that stated in objection to the last preceding item.

'For Henry A. Glidden, late Clerk of the Senate, for preparing a continuation of the general index of documents of the Senate and Assembly, from eighteen hundred and seventy to eighteen hundred and seventy-eight, and distributing the same pursuant to a resolution of the Senate adopted May twenty-fourth, eighteen hundred and seventy-seven, the sum of twelve hundred dollars.'

This item is objected to, and not approved, for the same reason as that stated in objection to the preceding item.

'And for preparing an index to the journal and testimony taken before the Senate on the trial of the charges against De Witt C. Ellis, and distributing the same, pursuant to a resolution of the Senate adopted August seventeenth, eighteen hundred and seventy-seven, the sum of five hundred dollars.'

This item is objected to, and not approved, for the same reason as that stated in objection to the last preceding item.

'For John W. Vrooman, for arranging the testimony, proceedings and journal of the Senate, in the trial of the charges against John F. Smyth, late Superintendent of the Insurance Department, and for preparing an index to the same, and for distributing the same, pursuant to resolutions of the Senate adopted March twelfth, eighteen hundred and seventy-eight, the sum of five hundred dollars.'

This item is objected to, and not approved, for the same reason as that stated in objection to the last preceding item.

'For the Clerk of the Assembly, to pay for additional clerical services and for engrossing, eleven hundred and fifty dollars, to be paid on vouchers giving the items of expenditures and receipts of the parties to whom the same may be paid.'

This item is objected to, and not approved, for the reason that chapter 379 of the laws of 1879 declares that 'no additional officers or employes shall be elected or appointed by the Senate or Assembly,' except those named in the act. No such 'additional clerical survices' as those mentioned in the item, could have been legally obtained, and hence the appropriation for compensation ought not to be made.

'For the clerk of the Senate, to pay for additional clerical services and for engrossing, five hundred dollars, to be paid on vouchers giving the items of expenditures and receipts of the parties to whom the same may be paid.'

This item is objected to, and not approved, for the same reason as that expressed in objection to the last preceding item.

'For deficiency in appropriations for maintenance of convicts sentenced to penitentiaries, in pursuance of chapter one hundred and fifty-eight of the laws of 1856, chapter five hundred and eighty-five of the laws of 1865, chapter six hundred and sixty-seven of the laws of 1866, chapter five hundred and seventy-four of the laws of 1869, chapter two hundred and forty-seven of the laws of 1874, and chapter five hundred and seventy-one of the laws of 1875, sixteen thousand dollars, or so much thereof as may be necessary.'

This item is objected to, and not approved, for the reason that it is deemed unwise to increase the provision already made for the purpose indicated. A large number of cells in the State prisons are now empty in consequence of an undue proportion of felons being confined in the penitentiaries.

'And for payment of certain expenses for board and rooms of Senate committee appointed May twenty-second, eighteen hundred and seventy-five to investigate the departments and offices of the government of the city of New York, seven hundred and sixty-nine dollars and fifty-eight cents.'

This item is objected to, and not approved, for the reason that the Constitution declares that 'the Legislature shall neither audit nor allow any private claim or account against the State, but may appropriate money to pay such claims as shall have been audited and allowed according to law.'[1] If this is a valid claim against the State it should be submitted to the Board of Audit for its action.

'For the office of the Secretary of State, for carpets and other necessary office furniture, seven hundred dollars.'

This item is objected to, and not approved, for the reason that in view of the approaching completion of the New Capitol it is deemed unwise to refurnish the apartments of the Secretary of State, until the question of future occupation is definitely settled.

'For the office of the State Engineer and Surveyor for carpet, oil cloth and letter-head die, four hundred dollars.'

This item is objected to, and not approved, for the same reason as that stated in objection to the item for the office of the Secretary of State.

'For deficiency in appropriations for expenses of committees of investigation, to defray expenses for printing testimony and report of proceedings of the Special Committee on Railroads, appointed under resolution of the Assembly of eighteen hundred and seventy-nine, fifteen thousand one hundred and eighteen dollars and eighty-five cents, on vouchers to be approved by the Comptroller.'

This item is objected to, and not approved, for the reason that no authority was conferred upon the committee named to contract the liability which it is proposed to pay. It is believed to be a claim which the Legislature is by the Constitution prohibited from auditing, and it should be presented to the Board of Audit for its consideration.[J]

'For the traveling and incidental expenses of the committee appointed by resolution of the Assembly, passed April twenty-eighth, eighteen hundred and seventy-nine, to represent the State of New York at the National Camp of the Grand Army of the Republic, at Albany, eighteen hundred and seventy-nine, two hundred and nineteen dollars and fifteen cents.'

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[1] Const. 1846, art. 3, § 19, added 1874.

[J] Const. 1846, art. 3, § 19, added 1874.

This item is objected to, and not approved, for the reason that the resolution creating the committee did not authorize or contemplate such an expenditure.

'For deficiency in appropriations for prosecuting the State survey, from January first to October first, eighteen hundred and seventy-nine, ten thousand dollars.'

This item is objected to, and not approved, for the reason that appropriations for the State survey have been made in the years 1878, 1879, and 1880. The Commissioners had no authority to make expenditures or contract liabilities beyond the amount of the appropriations, and no good reason exists for providing for this deficiency. It seems to me desirable that public officers should be made to understand that they must confine their expenditures within authorized limits.

'For Mrs. Catherine Hogan, widow of Patrick Hogan, as a gratuity, in full for all claims for damages for the loss by death of her said husband, who fell through an opening for the elevator, April twenty-fifth, 1879, while employed on the New Capitol, and was instantly killed, the sum of one thousand dollars.'

This item is objected to, and not approved, for the reason that if any provision is to be made in this case, it should be for the benefit of the children of the deceased, instead of the widow, who is not the mother of the children.

'For A. T. Brandow, as a gratuity, in full for all claims for damages for injuries received by him while in the discharge of his duty as a keeper in Sing Sing prison, November sixteenth, 1877, at the murderous assault of Henry Thomas, an insane convict in said prison, the sum of one thousand dollars.'

This item is objected to, and not approved, for the reason that the keeper has been continued in the employ of the State, and is not likely to be removed therefrom.

'For Ann Higgins, mother of William Higgins, as a gratuity, in full for all claims for damages sustained by her in the loss by death of her said son, who was her sole support, and who died on the eighteenth day of July, 1879, from injuries received by him while employed on the New Capitol, one thousand dollars.'

This item is objected to, and not approved, for the reason it is not deemed expedient to grant a gratuity in a case of this character.

'For Thomas J. Lawrence, corporal, Company F, Twenty-second Regiment, National Guard, as a gratuity, who was permanently disabled for life while on duty as required by law, in rifle practice, one thousand dollars.'

This item is objected to, and not approved, for the reason that the circumstances under which the injury occurred were not such as to justify the appropriation.

'For James F. Johnson, as a gratuity, in full for all claims for damages for injuries received by him from the falling of a block of granite upon him while in the employ of the State, on the fourth day of September, 1875, and which necessitated the amputation of a leg, one thousand dollars.'

This item is objected to, and not approved, for the reason that the person named has been continued in employment since the accident as gate keeper at the New Capitol. He has therefore enjoyed more constant employment and received more pay in a position far less laborious, than he would had he not been injured.

'For Chapman S. Strong, as a gratuity, in full for all claims for damages for injuries received by him as a keeper in Auburn State prison, from the criminal assault of convicts, in November, 1873, and while engaged in the discharge of his duties as such keeper in quelling an outbreak in said prison, one thousand dollars.'

This item is objected to, and not approved, for the reason that the lapse of seven years since the alleged injury, indicates doubt as to the propriety of the appropriation. It seems as though a meritorious case would have received earlier consideration.

'For Lawrence Hagar, father of Charles Hagar, as a gratuity, in full for all claims for damages sustained by him in the loss by death of his said son, who was his sole support, and who was killed by falling from a scaffold in March, 1880, while at work on the New Capitol, five hundred dollars.'

This item is objected to, and not approved, for the reason that it is deemed unwise to establish a precedent of the character indicated therein.

'For Mrs. Barbara Kennedy, widow of Captain John Kennedy, Junior, as a gratuity, in full for all claims for damages for the loss by death of her husband, resulting from sickness occasioned by exposure and hardship while in the discharge of his duties as Captain in the Eighth Regiment, National Guard, at Syracuse, under the orders of the Commander-in-Chief, during the riots of July, 1877, one thousand five hundred dollars.'

This item is objected to, and not approved, for the reason that no claim exists of the character indicated. The policy of granting a gratuity of the kind named is believed to be unwise and unjust.

'For Carl Meisner, of Battery G, Seventh Division, National Guard, State of New York, as a gratuity, who was permanently disabled for life by the premature discharge of a cannon while on duty with his battery, at Elmira, New York, on the thirtieth day of May, 1879, one thousand dollars.'

This item is objected to, and not approved, for the reason that the accident occurred at a voluntary parade of the organization of which the unfortunate man was a member, and not while he was on duty under orders from the State authority.

'For the payment of a canal certificate given by a late Canal Commissioner to Henry D. Dennison, December fourteenth, eighteen hundred and seventy-six, addressed to the Comptroller, for removing obstructions from the outlet of Cayuga lake and the channel of Seneca river, between Cross lake and Montezuma, five hundred and forty-two dollars and forty-eight cents, and for interest thereon the sum of one hundred and eight dollars and fifty cents.'

This item is objected to, and not approved, for the reason that the liability which it is proposed to liquidate was not authorized by law. If it is a valid or equitable claim against the State, it should be presented to the Board of Audit.

'For the Regents of the University, for the annual compensation of Samuel B. Woolworth, as Honorary Secretary of said board during his continuance in said office, the sum of two thousand dollars, payable in monthly installments, beginning from the tenth day of January, eighteen hundred and eighty.'

This item is objected to, and not approved, for the reason that the position is honorary, and does not involve any real service for the State, hence it should not require compensation.

'For the Regents of the University, for establishing and conducting examinations in accordance with chapter four hundred and twenty-five of the laws of 1877, five thousand dollars, to supply deficiency caused by want of appropriation, for such object, in eighteen hundred and seventy-nine.'

This item is objected to, and not approved, for the reason that expenditures of this character should be confined to the appropriations actually made. To provide for such deficiencies as that described in this item, only makes future deficiencies inevitable.

'For the State Cabinet of Natural History, for the purchase of the collection of objects of natural history owned by Charles D. Wolcott, comprising not less than twelve thousand specimens, four thousand dollars.'

This item is objected to, and not approved, for the reason that the State has already expended vast sums for objects of like character for which it has received inadequate benefit. The only excuse offered for this appropriation is to provide a market for specimens which the collector desires to sell.

'For the State Normal and Training School at Cortland, for completing the repairs of the building and for filling and grading the lot purchased, the sum of five thousand dollars, or so much thereof as may be necessary.'

This item is objected to, and not approved, for the reason that the appropriation for the maintenance of the school is believed to be ample to provide for all necessary improvements.

'For the State Normal and Training School at Fredonia, for repairs and improvement of buildings on plans subject to the approval of the Comptroller, seventeen thousand and thirty-two dollars, or so much thereof as may be necessary, and for apparatus five thousand dollars.'

This item is objected to, and not approved, for the reason that it appears to be extravagant in amount. It would be sufficient to erect and equip a handsome building for the purpose, as an original question. When it is proposed to expend such a sum upon a building already in use, it seems quite unreasonable.

Of the appropriations for the State Normal and Training School at Brockport, the following items are disapproved:

'For addition to buildings, twenty thousand dollars; for steam heating apparatus, twelve thousand one hundred and forty-eight dollars.' * * *

These items are objected to, and not approved, for the reason that the State has already provided abundantly for Normal schools, and there is no necessity for erecting additional buildings. The sum for heating apparatus is deemed extravagant and unnecessary.

'For the State Normal and Training School at Albany, for repairs to building, for additions to apparatus and for furniture and books, two thousand dollars.'

This item is objected to, and not approved, for the reason that the sum appropriated for the school is quite adequate to its frugal maintenance, and to provide for the objects named in the item.

'For the completion of the field work of the geological map of the Catskill mountain region and the southern counties of the State, twelve hundred dollars, to be paid on vouchers of the persons employed in the work, certified by the Secretary of the Board of Regents of the University.'

This item is objected to, and not approved, for the reason that no authority of law has been found under which the work named was commenced.

'For the Comptroller, for the purchase of the bronze statue of Robert R. Livingston, now in the Capitol, five thousand dollars.'

This item is objected to, and not approved, for the reason that while the people of the State are so heavily taxed for the completion of the Capitol, it does not seem reasonable to burden them still more in providing works of art with which to adorn that edifice.

'For printing and binding an amended edition of the New York Code of Public Instruction, to be prepared by the Superintendent of Public Instruction, and by him distributed one to each of the school districts of the State, the sum of twelve thousand dollars, or so much thereof as may be necessary.'

This item is objected to, and not approved, for the reason that it is not deemed to be a necessary or desirable expenditure of public funds.

'For the purchase of twelve hundred and fifty copies of volume one of Hough's Classified Abstract of the laws of New York, during the first century of the State government, at a rate not to exceed four dollars per volume, five thousand dollars, or so much thereof as may be necessary, to be paid on the certificate of the Secretary of State, and the work to be distributed by him to such offices of record, public officers and libraries as are now entitled by law to receive the Session laws of this State.'

This item is objected to, and not approved, for the reason that it is believed to be only the beginning of an expenditure which will require large appropriations hereafter to complete. The present is not a propitious time for inaugurating a new class of expenses to be borne by the State Treasury.

'For the Central New York Institution for deaf mutes, at Rome, for the support and instruction of nine deaf mutes for various periods of time, from the first of March to the first of October, 1879, in addition to those provided for by former appropriations, seven hundred and seventy-seven dollars and sixty-five cents, or so much thereof as may be necessary.'

This item is objected to, and not approved, for the reason that provision was made in advance by appropriation for the support of the pupils, and the managers of the institution ought not to have received any larger number than was thus provided for.

'For the Le Conteulx St. Mary's Institution for the improved instruction of deaf mutes, for the support and instruction of five deaf mutes for various periods of time, from the first day of January, 1879, to the first day of October, 1880, in addition to those provided for by former appropriations, the sum of nine hundred and fifty-two dollars and ninety-five cents, or so much thereof as may be necessary.'

This item is objected to and not approved, for the same reason as that stated in objection to the preceding item.

'For the St. Joseph's Institution for the Improved Instruction of Deaf Mutes, at Fordham, for the support and instruction of deaf mutes for various periods of time in

1878 and 1879, in addition to those provided for by former appropriations, one thousand seven hundred and eighty-nine dollars and ten cents, or so much thereof as may be necessary.'

This item is objected to and not approved, for the same reason as that stated in objection to the preceding item.

'For the State Board of Charities, for the support and care of State paupers, pursuant to chapter 661 of the laws of 1873, for deficiency in appropriations, fifteen thousand dollars.'

This item is objected to, and not approved, for the reason that a liberal allowance was made in the appropriation bill of last year, and a frugal administration of the fund thus provided should render this appropriation unnecessary.

'For the State Board of Charities, for deficiency in appropriations for current expenses, two thousand dollars.

This item is objected to, and not approved, for the reason that the Board should confine their expenses to the appropriations already made.

'For the county of Cayuga, as an equitable reimbursement for certain expenses incurred and paid for the two trials in 1873 and 1874, and the appeals thereon, of Michael Donohue, a convict, indicted for the murder of a convict in Auburn prison, including all disbursements made necessary during the incarceration of said Donohue prior to, pending and subsequent to the trials; for like expenses incurred and paid for the trials in 1874 of John Coughlin, Patrick Eagan, Thomas E. Hardy, and Patrick Clifford, convicts, indicted for assaults with deadly weapons upon a keeper in said prison, including like disbursements; for like expenses incurred and paid for the trial, in 1875, of Edwin Thomas, a convict, indicted for the murder of a convict in said prison, including like disbursements; for like expenses incurred and paid for the trial, in 1877, of Harvey Thorpe, a convict, indicted for the murder of a convict in said prison, including like disbursements; for like expenses incurred and paid for the trial, in 1877, of William Barr, a convict, indicted for the murder of a keeper in said prison, including like disbursements, the sum of seven thousand eleven dollars and forty-five cents.* '

This item is objected to, and not approved, for the reason that the county of Cayuga should bear the burden of criminal trials happening therein, as all other counties do. The fact that the offenders were State convicts does not furnish reason for an exception. The county receives great benefits from the location of the State prison, and it is no hardship for it to bear the incidental expenses of such trials.

' For the city of Utica, for assessment for the construction in 1875, of the Third and Seventh ward sewer outlet in front of the State property in said city, four hundred and eighty-two dollars and twenty cents, and

For the Knox street sewer, fifty-two dollars and thirty-three cents.'

These items are objected to, and not approved, for the reason that the city has no right to levy an assessment upon the State property for local improvements.

' For the city of Syracuse, as an equitable payment of the local assessment and expenses for paving on Salina street, in said city, in front of Salt Springs office, in 1876, three hundred and eighty-two dollars and seventy-two cents.

And of the local assessment and expenses for constructing a sewer in Leavenworth avenue and Clark street in said city, in front of lands belonging to the State, in 1877, two thousand four hundred and seventy-eight dollars and seventy-six cents.'

These items are objected to, and not approved, for the same reasons as those stated in objection to the items in favor of the city of Utica.

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* For previous vetoes of the Cayuga county claim, see 1877, p. 87, and 1878, p. 226.

'Of the appropriation for the commissioners of quarantine:

For repairs of buildings, ten thousand dollars.'

This item is objected to, and not approved, for the reason that the other appropriations for the support and repair of the quarantine establishment are believed to be ample for the purpose.

'For the construction of a draw in the bridge over the navigable channel of the Oneida river at Brewerton, between the counties of Oswego and Onondaga, the sum of seven thousand five hundred dollars, payable out of any money in the Treasury applicable to the payment of expenses of canals.

This item is objected to, and not approved, for the reason that it is deemed to be an improper item to be inserted in this bill.

'For removing obstructions and cleaning the bed of Bond's creek south of Dunham's basin waste weir to Fort Edward, Washington county, the sum of three thousand dollars, or so much thereof as may be necessary; the work to be done under the supervision and direction of the Superintendent of Public Works. Said appropriation shall be payable on the warrant of the Auditor, out of any funds in the Treasury to the credit of the canal fund and applicable to the improvement of the Champlain canal.'

This item is objected to, and not approved, for the same reason as that stated in objection to the preceding item.

'For completing and finishing the removal of obstructions in Chautauqua lake and in the outlet thereof, the sum of four thousand dollars, the work to be done and money expended under the direction of the Commissioners of Navigation of said lake; but no part of said money herein appropriated shall be paid to such Commissioners until they shall have executed a bond to the people of this State, to be approved by the Comptroller, conditioned that they will faithfully discharge their duties as such commissioners, and duly account, under oath to the Comptroller, for all moneys received by them for the purpose aforesaid.'

This item is objected to, and not approved, for the reason that the proposed expenditure is not deemed a proper one to be provided for out of the State Treasury.

'For the construction of a bridge over the west branch of the Hudson river, known as the Sacandaga river, near the village of Northville, in the county of Fulton, five thousand dollars, to be expended under the direction of the Supervisor of the town of Northampton, upon vouchers to be approved by the Comptroller.'

This item is objected to, and not approved, for the reason that the object of the proposed expenditure is not considered to be a proper charge upon the State Treasury.

'For the construction of a bridge over Grass river, in the town of Russell, county of St. Lawrence, on the road leading from Canton to Edwards, two thousand five hundred dollars, to be expended under the direction of the Supervisor of said town, upon vouchers to be approved by the Comptroller.'

This item is objected to, and not approved, for the same reason as that expressed in objection to the preceding item.

'For repairing and macadamizing the road across the Onondaga Indian reservation leading from what is known as the 'Castle Hotel,' in the town of Onondaga to a point intersecting the road leading by the house of Edwin Clark, the sum of one thousand dollars, to be expended under the supervision of Patrick King, of said town, who is hereby appointed a Commissioner for that purpose, who shall receive out of said sum three dollars per day for each full day occupied by him in the discharge of such duty, but for not exceeding fifteen days in the aggregate, and who shall execute to the people of this State a bond, to be approved by the Comptroller, for the faithful performance of his duties as such Commissioner.'

This item is objected to, and not approved, for the reason that it is not a legitimate object for the expenditure of State funds.

'For the construction of a wagon road on the reservation of the Saint Regis Indians, in the county of Franklin, starting from a short road now laid, which runs from the old State road to the reservation, and thence running nearly parallel with the Saint Regis river northerly to the Canada line, and a branch road, commencing at a point in such contemplated road about midway between its extremities and running thence easterly to Drum street in the town of Fort Covington, the sum of two thousand five hundred dollars, to be expended under the supervision of Alfred Fulton and Sidney G. Grow, of Hogansburg, who are hereby appointed Commissioners for that purpose, who shall each receive out of said sum three dollars per day for each full day occupied in and about such supervision; but the total compensation of such Commissioners shall not exceed the sum of two hundred and fifty dollars, and no part of the sum herein appropriated shall be paid over to said Commissioners until they shall have executed a bond to the people of this State, to be approved by the Comptroller, for the faithful performance of their duties as such commissioners.'

This item is objected to, and not approved, for the same reason as that expressed in objection to the last mentioned item.

'For repairing the highway upon the Cattaraugus Indian Reservation, running from Gowanda through the reservation into the town of Perrysburgh in the county of Cattaraugus, changing the line thereof, and for the erection and repair of bridges thereon, the sum of three thousand dollars, to be expended under the supervision of Millin T. Hill, James Welch, and Henry Locke of Gowanda, who are hereby appointed commissioners for that purpose; and for repairing the highway upon such reservation running from Versailles through the reservation into the town of Collins, in Erie county, to Lawtons' Station, and for the erection and repair of bridges thereon, the sum of five hundred dollars, to be expended under the supervision of Elijah H. Lawton and Enos S. Hibbard, of Collins, who are hereby appointed commissioners for that purpose; each of said five commissioners shall receive out of said sum two dollars per day for each full day occupied by him in and about such service, but the total compensation of said first-named three commissioners shall not exceed the sum of two hundred dollars; and the total compensation of said last-named two commissioners shall not exceed the sum of seventy-five dollars; and no part of the sums hereby appropriated shall be paid over to the commissioners in each case until they shall have executed a bond to the people of this State, to be approved by the Comptroller, conditioned that they will faithfully discharge their duties as such commissioners and truly account under oath to the Comptroller for all moneys received by them for the purposes aforesaid, and no part of said sum shall be expended except upon a plan and estimate of said work which will complete it within the sums above appropriated.'

These two items are objected to, and not approved, for the same reason as that expressed in objection to the two preceding items.

'For building the necessary culverts and sluices, and for grading and graveling the approaches to the bridge over the Onondaga creek on the Onondaga Indian reservation, and for repairing the roadway to the same, on what is called the William Hill road, the sum of one thousand five hundred dollars, or so much thereof as may be necessary, to be expended under the supervision of Daniel Pinckney, of the town of Onondaga, who is hereby appointed a commissioner for that purpose, who shall receive out of the sum herein appropriated three dollars per day for each full day occupied by him in such service, but his total compensation shall not exceed the sum of one hundred and fifty dollars, and no part of the sum herein appropriated shall be paid over to said commissioner until he shall have executed a bond to the people of this State, to be approved by the Comptroller, for the faithful performance of his duties as such commissioner.'

This item is objected to, and not approved, for the same reason as that expressed in objection to the several items of similar character preceding.

'For building a bridge to be constructed of iron, stone and wood, across the Tonawanda creek, on the Tonawanda Indian reservation, where said creek is crossed by the Akron road, leading from the county of Erie into the county of Genesee, the sum of two thousand two hundred dollars, to be expended under the supervision of Joseph W. Holmes, Alpha E. Bennett and Daniel Norton, of Alabama, Genesee county, who are hereby appointed commissioners for that purpose, who shall receive out of the sum herein appropriated two dollars per day for each full day occupied by them in such service; but their total compensation shall not exceed the sum of one hundred and fifty dollars; and no part of the sum herein appropriated shall be paid over to said commissioners until the like sum of twenty-two hundred dollars shall be paid to them for the same purpose by the Tonawanda band of Seneca Indians, from their annuities or trust fund interest, nor until such commissioners shall give a bond to the people of this State, conditioned for the faithful performance of their duties as such commissioners.'

This item is objected to, and not approved, for the same reason as that expressed in the several preceding items of similar character.

'For the services of the superintendent and teachers in the manual labor school for the Tonawanda Indians, one thousand dollars.'

This item is objected to, and not approved, for the reason that the provision heretofore made for the school is deemed ample for all necessary purposes.

'For the Soldiers' and Sailors' Home, at Bath, for the erection of a hospital, ten thousand dollars;

For improvement of grounds, for fencing, and for conducting farm, five thousand dollars; and

For the erection of a chapel, five thousand dollars.'

The three items for the Soldiers' and Sailors' Home, at Bath, are objected to, and not approved, for the reason that the large appropriations heretofore made for that institution render a further expenditure of State funds inexpedient at the present time.

'For the Paymaster-General, to defray expenditures authorized by chapter one hundred and eighty-four of the laws of eighteen hundred and sixty-three, one thousand dollars, or so much thereof as may be necessary.'

This item is objected to, and not approved, for the reason that the expenditure is not deemed necessary.

'For altering sights of Remington breech loading rifles as recommended by the commission of officers appointed by the Commander-in-Chief pursuant to general orders number twenty-six of eighteen hundred and seventy-nine, three thousand dollars, or so much thereof as may be necessary, to be paid on the audit of the Adjutant General and the approval of the Commander-in-Chief.'

This item is objected to, and not approved, for the reason that it is not deemed expedient to make the proposed expenditure during the present year.

'For the Adjutant General, to enable him to provide for increase of military fund of separate companies of infantry to equalize the same with funds of the other organizations of the National Guard, seven thousand four hundred dollars, or so much as may be necessary, to be paid on the audit of the Adjutant General and the approval of the Commander-in-Chief.'

This item is objected to, and not approved, for the reason that the finances of the State are not now in condition to warrant an expenditure of this character.

'For the erection of magazines at such State armories as may be designated therefor by the Adjutant General, and for laying flagging at such armories, the sum of five thousand dollars, or so much as may be necessary, to be expended under the direction of the Chief of Ordnance, upon plans to be approved by the Adjutant General, and paid upon the audit of the Adjutant General and the approval of the Commander-in-Chief.'

This item is objected to, and not approved, for the reason that it is deemed inexpedient to make further expenditures of this character until the armories already provided for shall have been completed.

'For the Chief of Ordnance, to purchase the uniforms and equipments lately in the possession of the Twenty-seventh regiment, National Guard, which was disbanded by the Commander-in-Chief, three thousand nine hundred and fifty-three dollars and fifty cents, subject to the approval of the Adjutant General.'

This item is objected to, and not approved, for the reason that the property already belongs to the State.

'For replacing the uniforms and equipments belonging to the Sixty-fifth Regiment of the National Guard, which were injured or destroyed while that Regiment was on duty at Buffalo, under orders of the Commander-in-Chief, during the riots of July, 1877, as have been or may be audited and allowed by the Adjutant General, four thousand three hundred and seventy-five dollars, or so much thereof as may be necessary, to be paid to the credit of the uniform and equipment fund of said regiment, and to be disbursed upon the same audit and regulations as are required in case of payment of other sums from that fund.'

This item is objected to, and not approved, for the reason that the State has heretofore made generous provision for the National Guard, and it is considered unwise to make special appropriations of this character.

'For replacing the uniforms and equipments belonging to the Seventy-fourth Regiment of the National Guard, which were destroyed or injured while that Regiment was on duty at Buffalo and Hornellsville, under the orders of the Commander-in-Chief, during the riots of June and July, 1877, as have been or may be audited and allowed by the Adjutant General, eight thousand dollars, or so much thereof as may be necessary, to be paid to the credit of the uniform and equipment fund of said regiment, and to be disbursed upon the same audit and regulations as are required in case of payment of other sums from that fund.'

This item is objected to, and not approved, for the same reason as that stated in objection to the item for the Sixty-fifth Regiment.

'For replacing the uniforms and equipments belonging to the Ninth Regiment, National Guard, which were injured or destroyed while that Regiment was on duty at West Albany, under the orders of the Commander-in-Chief, during the riots of July, 1877, as have been or may be audited and allowed by the Adjutant General, seven thousand seven hundred and thirty-eight dollars and fifty cents, or so much as may be necessary, to be paid to the credit of the uniform and equipment fund of said regiment, and to be disbursed upon the same audit and regulations as are required in case of payment of other sums from that fund.'

This item is objected to, and not approved, for the same reason as that stated in objection to the item for the Sixty-fifth Regiment.

'For replacing the uniforms and equipments belonging to the Twelfth Separate Company, National Guard, which were injured or destroyed while that Company was on duty at West Albany, under the orders of the Commander-in-Chief, during the riots of July, 1877, as have been or may be audited and allowed by the Adjutant General, sixteen hundred dollars, or so much thereof as may be necessary, to be paid to the credit of the uniform and equipment fund of said Company, and to be disbursed upon the same audit and regulations as are required in case of payment of other sums from that fund.'

This item is objected to, and not approved, for the same reason as that stated in objection to the item for the Sixty-fifth Regiment.

'For replacing the uniforms and equipments belonging to the Fifty-fourth Regiment, National Guard, which were injured or destroyed while that Regiment was on duty at Hornellsville, under the orders of the Commander-in-Chief, during the riots of July, 1877, as have been or may be audited and allowed by the Adjutant General, eight thousand four hundred and eighty dollars, or so much thereof as may be necessary, to be paid to the credit of the uniform and equipment fund of said Regiment and to be disbursed upon the same audit and regulations as are required in case of payment of other sums from that fund.'

This item is objected to, and not approved, for the same reason as that stated in objection to the item for the Sixty-fifth Regiment.

'For the erection of an armory in the city of Poughkeepsie, Dutchess county, for the use of the National Guard, in said city and county, the sum of forty thousand dollars, to be expended under the direction of the Adjutant General, the Inspector General, the Chief of Ordnance of this State, and the Commandant of the Fifth Division; but no part of said sum shall be expended by them, except upon a contract for the completion of such armory within the limits of this appropriation, nor until an indefeasible title to a suitable site for such armory, free from all incumbrance, shall be vested in the people of this State, without cost to the State, and to be approved by the above-named officials, or a majority of them.'

This item is objected to, and not approved, for the reason that it is deemed unwise to commence the erection of additional public buildings until those already in course of construction shall have been completed, or at least so far advanced that the sum necessary to provide for their completion can be approximately estimated.

'For building an addition to the State armory at Oswego, on lands recently purchased by the State for such purpose, for the use of a battery or troop of cavalry attached to the Sixth brigade, National Guard, the sum of fifteen thousand dollars, to be expended under the direction of the Adjutant General, the Inspector General, and the Chief of Ordnance of this State; but no part of said sum shall be expended by them, except upon a contract for the completion of such addition within the limits of this appropriation.'

This item is objected to, and not approved, for the same reason as that stated in objection to the item for the proposed armory at Poughkeepsie.

'For the erection of an armory for the use of the Seventeenth Separate Company of Infantry at Flushing, Queens county, the sum of nine thousand dollars, to be expended under the direction of the Adjutant General, the Inspector General, and the Chief of Ordnance; but no part thereof shall be expended until the title to the land upon which such armory is to be constructed shall have been vested in the State free from all incumbrances.'

This item is objected to, and not approved, for the same reason as that stated in objection to the item for the proposed armory at Poughkeepsie, and for the further reason that it is deemed inexpedient for the State to undertake the erection of armories for the accommodation of separate Companies of the National Guard.

'For deficiency in appropriations for the erection of the State armory at Newburgh, the sum of five thousand dollars, to be paid on the audit of the Adjutant General and the approval of the Commander-in-Chief.'

This item is objected to, and not approved, for the reason that the armory should have been erected within the amount appropriated for it.

'For Sing Sing prison

For rebuilding guard house, three hundred dollars.

For building stone wall under iron fence, and repairs to outside wall and gates, seventeen hundred and fifty dollars.

For completing water works, five hundred dollars.

For building two guard houses on new dock, fifteen hundred dollars.

For iron fence, and gate at south wall entrance, twelve hundred and fifty dollars.

For iron gate under main building, four hundred and fifty-eight dollars.

For two gates in fence on river front, five hundred and sixty-three dollars.

For flagging and grading walks in yard, fifteen hundred dollars.

For general repairs, painting, relaying floors, purchase of tools, repairing fences, carts and wagons, one thousand dollars.

For completion of drains and sewers, two hundred dollars.

For repairing key room, putting up gun-rack, for locks, keys and repairs in prison hall, five hundred dollars.

For altering and repairing guard house, two hundred and fifty dollars.

For relaying floors and building stalls in stable, three hundred dollars.

For making survey and preparing plans and specification for iron fence, two hundred and sixty-seven dollars.

For preparing plans and specifications and superintending putting on of new roof to female prison, one hundred and twenty-three dollars and fifty cents.

For new ice house, five hundred dollars.

For repairing roofs, one thousand dollars; and

For library, five hundred dollars.'

The eighteen several items above enumerated for the Sing Sing prison, are objected to, and not approved, for the reason that the appropriations already made for the care and maintenance of the State prisons are believed to be adequate for all necessary purposes during the current year.

'For Auburn prison, for repairing roofs, one thousand dollars.

For introduction of gas into cells, fifteen hundred dollars.

For apparatus and fixtures for heating the shops and extinguishing fires therein, two thousand dollars.

For ventilation of wings, five hundred dollars.

For rebuilding and enlarging shops, six thousand dollars.

For repairing and refurnishing chapel and officers' quarters, one thousand dollars, and

For library, five hundred dollars.'

All of the items for the Auburn prison are objected to, and not approved, for the same reason as that stated in objection to the several items for the Sing Sing prison.

'For Clinton prison, for new guard posts, two hundred dollars.

For new ovens, fifteen hundred dollars.

For repairing roofs, five hundred dollars.

For two extra guards, on account of enlargement, fifteen hundred dollars.

For repairing pickets, two hundred dollars.

For steam heating apparatus, labor and fixtures, twelve hundred and fifty dollars.

For repairing buildings, five hundred dollars.

For sewers, one thousand dollars.

For switch and track from railroad to prison yard, two hundred and fifty dollars.

For iron pipe to convey water into prison yard, two thousand five hundred dollars.

For six hundred feet of hose, six hundred and sixty dollars; and

For library, five hundred dollars.'

All of the items for the Clinton prison are objected to, and not allowed, for the same reason as that stated in objection to the several items for the Sing Sing and Auburn prisons.

'For the Superintendent of State Prisons, for rent of office for two years from June first, 1879, five hundred dollars.

For furniture, carpets and shelving, six hundred dollars.

For safe, two hundred dollars;

For the Superintendent of State Prisons, for counsel fees in the Senate investigation, in 1879, as to the removal of the agent and warden of Auburn prison, two hundred and fifty dollars; and

For counsel fees in the Assembly investigation, in 1880, into the circumstances attending the lease of the Dannemora railroad, two hundred and fifty dollars.

For the Superintendent of State Prisons, to pay Charles D. Bruyn, assignee of Thomas Hamilton, for balance due said Hamilton on account of materials furnished and delivered to the authorities of the State prison at Sing Sing, the sum of two thousand and thirty-eight dollars and ninety-three cents.'

All of the several items above enumerated for the Superintendent of State Prisons are objected to, and not approved, for the reason that most if not all of them are of a character which require the action of the Board of Audit before they can be allowed constitutionally by the Legislature.*

'For the asylum for insane criminals, at Auburn, for new coal cellar, for sewer pipes, changing location of steam pipes, and purchase of regulation valve for steam distribution and pipe for the same; for pointing and repairing west wall; for fitting up carpenter shop; for purchase of engine and steam pump; for water pipe to connect with city water works; for ceiling and fitting up ten rooms in sixth and seventh wards as strong rooms; for shutters and iron screens for seven windows in fifth ward; for addition to green-house; for washing machine; for carpets, curtains and table furniture for center building; and for library and surgical and other instruments, six thousand seven hundred and fifty dollars.'

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* Const. 1846, art. 3, § 19, added 1874.

This item is objected to, and not approved, for the same reason as that stated in objection to the several items for the Sing Sing, Auburn and Clinton prisons.

Of the appropriation for the New York State Reformatory, at Elmira, the item which reads as follows:

'And to provide a fund for carrying on its industries, to be used under the direction of the managers, fifty thousand dollars,'

is objected to, and not approved, for the reason that an appropriation of this character should be more carefully guarded, so as to effectually provide for its proper application and preservation as a working capital for the institution.

'For the Willard Asylum for the Insane, for furniture for the new group now in the course of erection, the sum of five thousand dollars; for a bridge or an earth embankment and extension of railroad across the ravine south of the main asylum building, to the two groups of buildings south of the ravine, ten thousand dollars; and for the completion of the laundry floor and enlargement of the steward's office, five thousand dollars.'

All of the several items for the Willard Asylum for the Insane are objected to, and not approved, for the reason that liberal provision was made in the Supply bill of 1879, for the completion of the improvements authorized, and the managers cannot be justified in requiring further means for that purpose.

'For the Buffalo Asylum for the Insane * * * for grading and subsoiling garden; for fertilizer for grounds; for grass and garden seeds; and for fences, five thousand dollars.'

This item is objected to, and not approved, for the reason that ample provision has heretofore been made for all necessary expenses to put this institution in operation, and no further appropriations should be made for its completion or equipment.

'For the Hudson River State Hospital for the Insane, for deficiencies pertaining to the several contracts, and for extra work as directed by the Building Superintendent, twenty thousand six hundred and nineteen dollars and sixty-nine cents; * * * * * * * * * *

And for steam boilers, setting the same, and connections; for renewals and repairs, including re-setting of boilers; for fixtures for laundry, drying room and ironing rooms and equipment of east and west section; for building drive-way under Hudson River Railroad bed; for ventilating pipes; for iron door and window guards; for extending water pipes in laundry; for coal sheds and tramway; for yard walls and fences; for flooring umbras; for draining and paving around portions of the buildings; for plastering air ducts, and for salary of Building Superintendent, under whose direction the work is to be done, twenty-four thousand dollars.'

The two several items above enumerated for the Hudson River State Hospital for the Insane, are objected to, and not approved, for the reason that ample and indeed extravagant provision has heretofore been made for this Institution. No further allowance for its improvement should be made until there shall be a demonstration of its usefulness for some other purpose than the expenditure of State funds. Another reason for not approving these items, is the fact that the Trustees of the Hospital formally notified the Governor within a few weeks that no building was contemplated during the present year.

'For the Binghamton Asylum for the Chronic Insane; for window guards; for repairing vestibules; for painting interior wards, extensions and stairways; for repairs to administration building; for building kitchen and storeroom; for drains and grading; for excavating beneath floors of basement room; for iron water tanks and connections; for materials and labor for plumbing and gas fitting; for furniture for wards, laundry, kitchen and administration building; for fitting up dispensary; for windows in towers; for completing sewerage; for telephonic communication with water-works and city of Binghamton; for farming implements, stock, fertilizers and fencing; for farm buildings; for hay scales; for gas works, laying mains and making connections; for officers' salaries to close of current fiscal year; for deficiency on account of maintenance; for completing, heating and ventilation, including fan-house; and for alterations and repairs of south wing, sixty-four thousand five hundred and ninety dollars; to be expended, except as to existing indebtedness, on contracts approved by the Comptroller.'

This item is objected to, and not approved, for the reason that a much larger sum has already been expended upon the Asylum than was contemplated or provided for in the law creating it. No further appropriation should be made for this Institution until some reasonable assurance can be secured that its affairs shall be conducted in accordance with the laws of the State relating to it.

'For the New York State Asylum for the Blind at Batavia, for the construction of boiler house and laundry and purchase of heating and other apparatus for the same, twenty-six thousand seven hundred and sixty-eight dollars, to be expended on contracts to be approved by the Comptroller.'

This item is objected to, and not approved, for the reason that the expenditures already made upon this Institution have been beyond the amount contemplated when the work was commenced. Further appropriations should await a time when the resources of the State are less seriously burdened for the erection and improvement of public buildings.

'For the Thomas Asylum for Orphan and Destitute Indian Children; for perfecting bathing arrangement; for building cellar under laundry; for repairs to exterior of buildings and for erecting building for nursery rooms and hospital, three thousand four hundred and fifty dollars.'

This item is objected to, and not approved, for the reason that it is believed to be an unnecessary amount for the purposes indicated.

'For the Western House of Refuge for Juvenile Delinquents, for deficiency in appropriations for erecting and furnishing an additional building for the female department and the erection of a kitchen and bakery; for furnishing the work rooms, school rooms, dormitories and attendants' quarters of the new branch of such additional building; for grading and improving the grounds; and for conveying steam heat throughout the buildings, ten thousand dollars; and

For the erection of a new barn, five thousand dollars; and

For the erection of additional buildings for a primary and a graduating department for boys, sixty-five thousand dollars, but no part of this sum shall be expended except upon plans to be approved by the Comptroller.'

The several items for the Western House of Refuge for Juvenile Delinquents are objected to, and not approved, for the reason that it is not deemed for the interest of the State that the proposed expenditures should be made at the present time.

'For the Society for the Reformation of Juvenile Delinquents, on Randall's Island, for deficiency in appropriations for current expenses, thirty thousand dollars.

For alterations of and additions to dormitory for employes, and for remodeling dining room, three thousand dollars.

For the erection of a suitable building for storing coal, two thousand dollars; and

For the erection of galleries in the chapel and for furnishing and painting the same, three thousand dollars.'

The several items for the Society for the Reformation of Juvenile Delinquents, on Randall's Island, are objected to, and not approved, for the reason that they are deemed to be unnecessary, and, therefore, unwise appropriations of public money.

'For the Seamen's Retreat Hospital on Staten Island, * * * and

For the erection of an iron fence around the hospital grounds and one around the cemetery and necessary repairs of cemetery; for the introduction of steam and other heating apparatus in the hospital; for insurance and for the completion of repairs, painting and erection of new buildings as provided in chapter 272 of the laws of 1879, the sum of twenty-three thousand nine hundred and fifty dollars.'

This item is objected to, and not approved, for the reason that it is deemed unwise to make the proposed improvement at the present time.

'For the Mariners' Family Asylum, on Staten Island, to reimburse it for moneys paid for insurance, repairs, drainage and other improvements on and around the buildings, the sum of seven thousand dollars; and

For painting and plumbing, for building a new roof to main building and erection of new barn, the sum of three thousand dollars.'

The two items for the Mariners' Family Asylum, on Staten Island, are objected to, and not approved, for the reason that the proposed expenditures are not believed to be proper for the State to assume.

'For Charles Van Benthuysen and Sons, for printing, pursuant to concurrent resolution passed March 12th, 1880, two thousand copies of the annual report of the Superintendent of the Insurance Department, fire and life portion complete, two thousand copies fire and marine portion of said report, and fifteen hundred copies of the life and casualty portion of said report, and for binding the same in full cloth, gilt, to be paid upon the certificate of the Superintendent of the Insurance Department on the completion and delivery of the said work, five thousand four hundred and thirty-two dollars and nineteen cents; the said amount to be paid from the surplus fund in the treasury arising from the excess of moneys paid into the treasury by the Superintendent of the Insurance Department over and above the moneys disbursed on account of said department:

For printing and binding pursuant to the resolution of the Assembly adopted May 19th, 1879, twenty-six hundred and twenty-five sets, being seven thousand eight hundred and seventy-five volumes, of the annual report of the Adjutant General for eighteen hundred and sixty-eight, being a complete roster of the officers of the volunteer forces of this State during the late war for the preservation of the Union, payable upon due certificate of the proper completion and delivery of the work, thirteen thousand one hundred and eighty-eight dollars and twenty-two cents, or so much thereof as may be necessary;

For printing and binding six thousand volumes of the natural history of the State, volume five, Paleontology, text and plates, the sum of thirteen thousand five hundred dollars, or so much thereof as may be required by the contracts for the publication of said work now in force;

For printing testimony taken in the contested election case of Trowbridge against Tighe, in 1879, forty-nine dollars and seventy-six cents;

For printing testimony taken in the investigation of the Brooklyn bridge, in 1879, two hundred and fifty-seven dollars and thirty-seven cents; and

For printing testimony taken in the investigation of the Kingston election case, one hundred and sixty-three dollars and eighty cents.'

All of the several items for Charles Van Benthuysen & Sons, are objected to, and not approved, for the reason that several of them are believed to be covered by the contract for Legislative printing recently executed by the firm named, and the rest are of such a character as to render them unsuited for legislative action without having been considered by the Board of Audit.*

'For Weed, Parsons and Company, for two copies of the Bankers' Code, two copies of the Insurance laws of the State of New York, and one copy of Webster's Dictionary, furnished the Clerk of the Senate, pursuant to resolution of the Senate passed January 27, 1880, to be paid on the certificate of the Clerk of the Senate, twenty-five dollars.

For printing three hundred copies of testimony in the matter of the contested seat of George F. Carman against Charles T. Duryea, in 1879, to be paid on the certificate of the Chairman of the Committee on Privileges and Elections of the Assembly of 1879, sixty-six dollars and seventeen cents.

For printing and binding three thousand two hundred copies of the proceedings of the Legislature of the State of New York, in commemoration of its removal from the Old to the New Capitol, pursuant to resolution of the Assembly, passed April 29th, 1879, to be paid on the certificate of the Clerk of the Assembly, three hundred and seventy-two dollars and sixty-seven cents.

For printing seventeen thousand copies of the report of the Special Committee of the Assembly on the State Normal Schools, furnished pursuant to resolution of the Assembly, passed May 19th, 1879, and for packing and shipping the same, to be paid on the certificate of the Clerk of the Assembly, eight hundred and thirty-five dollars.

For printing, binding and furnishing materials, for Committee on General Laws of the Assembly for 1879, to be paid on the certificate of the Chairman of the Committee, one hundred and twenty dollars and sixty-five cents.

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* Const. 1846, art. 3, § 19, added 1874.

For printing testimony in the matter of the contested seat of Liddle against Hynes, in the Assembly of 1880, to be paid on the certificate of the Chairman of the Committee, seven hundred dollars.

For balance of account for printing and furnishing materials for the select Committee of the Senate of 1878 and 1879, to revise the statutes, six hundred and sixty-five dollars and twenty-one cents;

For printing for the special committee of the Senate of 1879, to revise civil, penal and criminal codes, to be paid on the certificate of the Chairman of the Committee, two thousand nine hundred and fifty-two dollars and fifty-seven cents;

For printing and lithographing reports of the State Cabinet of Natural History, in 1879 and 1880, to be paid on the certificate of the Secretary of the Board of Regents of the University, six hundred and twenty-three dollars;

For furnishing eighteen hundred and sixty-six copies of the New York civil list, pursuant to concurrent resolution of the Legislature passed May eighth, 1879, to be paid on the certificate of the Secretary of State, three thousand seven hundred and thirty-two dollars;

For seven thousand copies of the seventh annual report of the Adirondack survey, furnished pursuant to concurrent resolution of the Legislature, passed April seventeenth, 1879, to be paid on the certificate of the Secretary of State, twenty-four thousand five hundred dollars;

For printing fifty copies of the minority report of the Special Committee on Railroads, to be paid on the certificate of such minority, seventy-six dollars and eighty cents;

For furnishing seventeen sets, full bound, of file boards for Senate and Assembly bills, journals and documents for the use of the State officers, one hundred and two dollars;

For balance of account for printing and lithographing reports of State Cabinet of Natural History, as per bill on file in Comptroller's office, one hundred and twenty-eight dollars and ten cents;

For furnishing one hundred and fifty-three sets of Senate and Assembly file boards for bills, for the Clerk of the Assembly, pursuant to resolution of the Assembly passed March fourth, 1880, two hundred and twenty-nine dollars and fifty cents;

'For balance of account for printing, as per bill on file in the Comptroller's office, Department of Public Instruction, ninety-five dollars and sixty-nine cents; for Assembly Committee on Commerce and Navigation, six hundred and fifty-one dollars and nine cents; for Clerk's manuals for Clerk of the Assembly, six dollars and five cents, and for Commissioners to revise the statutes, twenty dollars;

For printing and binding twenty thousand copies of the report of the Special Committee on Railroads of 1879, furnished pursuant to resolution of the Assembly, passed February sixth, 1880, to be paid on the certificate of the Clerk of the Assembly, one thousand three hundred and forty-eight dollars;

For printing and binding fifty copies of chapters fourteen to twenty-one, inclusive, of the revision of the statutes, for the use of the Judiciary Committee of the Senate of 1880, to be paid on the certificate of the chairman of the committee, fifty dollars;

For printing and binding, in cloth, proceedings of the University Convocation of 1876, five hundred dollars, to be paid on the certificate of the Secretary of the Board of Regents;

For printing and binding, in cloth, the Manual of the Regents of the University for 1880, seven hundred dollars, to be paid on the certificate of the Secretary of the Board of Regents;

For printing, lithographing, binding and stationery furnished the State Museum of Natural History, five hundred dollars, to be paid on the certificate of the Director of the Museum;

For printing twelve thousand copies of the report of the State Assessors, pursuant to concurrent resolution of the Legislature, passed February twelfth, 1880, eight hundred dollars;

For printing, and lithographing one thousand copies of the Geological map of the Catskill mountain region in the Southern counties of the State, and printing the documents accompanying the same, two thousand dollars, or so much thereof as may be necessary, to be paid on the certificate of Secretary of the Board of Regents; and

For six thousand copies of the seventh annual report of the Adirondack survey, furnished pursuant to concurrent resolution of the Legislature passed April thirteenth, 1880, to be paid on the certificate of the Secretary of State, the sum of fifteen thousand dollars.'

All of the several items for Weed, Parsons & Co. are objected to and not approved, for the reason that several of them are believed to be covered by the contract for legislative printing, and the rest of them are of a character which brings them under the prohibition of section 19, article 3 of the Constitution, and necessitates their consideration by the Board of Audit.

### FREE SCHOOL FUND.

'The appropriation made in chapter two hundred and seventy-two of the laws of 1879, in the following words, namely:

'For instruction in Academies and Union schools in the science and practice of common school teaching, for the year eighteen hundred and seventy-nine, pursuant to chapter four hundred and twenty-five of the laws of eighteen hundred and seventy-seven, the sum of thirty thousand dollars, or so much thereof as may be necessary, payable from the free school fund, to supply any deficiency therefor in the income of the United States Deposit Fund,' is hereby made applicable to any expenditures made in the fiscal year ending September thirtieth, eighteen hundred and eighty, for the purpose therein mentioned.'

This item is objected to, and not approved, for the reason that the appropriations for the purpose indicated, for the current year, are believed to be quite adequate to the interests involved.

'For removing obstructions from the outlet of Cayuga lake and the channel of Seneca river, to be expended under the direction of the Superintendent of Public Works, in so deepening and improving the channel of said outlet and river, and so increasing the water flow thereof, and completing and finishing the dredging out of the same both above and below the aqueduct crossing said outlet, as fully to compensate for the obstructions occasioned by the State works, and to restore the original capacity of said outlet, the sum of thirty thousand dollars; but no part of this appropriation shall be expended, unless in the judgment of the State Engineer and Surveyor, the State works cause or contribute to the damages complained of.'

This item is objected to, and not approved, for the reason that the next item following it is for deepening the channel of the Cayuga Lake inlet. The latter item seems to have merit in the fact that the lack of water in the lake greatly impedes the navigation of the inlet. So long as this condition remains there is no necessity of increasing the capacity of the outlet.

'For the Adjutant General, for paying to the Seventh Separate Company of Infantry, Third Brigade, National Guard (formerly the Third Separate Company of Infantry, Tenth Brigade, Third Division, National Guard), as commutation for rations furnished said company from the twenty-third to the twenty-ninth day of July, 1877, both inclusive, while on duty, under orders from the Commander-in-Chief, three hundred dollars, or so much thereof as may be necessary, to be paid on the audit of the Adjutant General and the approval of the Commander-in-Chief.'

This item is objected to, and not approved, for the reason that the claim has heretofore been considered and rejected by the military authorities of the State."

June 17.

**Veto of Assembly bill, entitled "An act to authorize and direct the county clerk of Richmond county, to record certain papers now on file in the Richmond County Clerk's office."**

"This bill authorizes the recording of certain papers in the Clerk's office of Richmond county, which, it is alleged, former clerks have neglected to record, and provides that the Clerk shall receive as compensation the same fees as are now allowed by law for like services, to be paid by the County Treasurer. This is clearly in violation of section 18 of article 3 of the Constitution, in creating, by a local bill, new fees for a public officer during his term of service.

If the proposed work is necessary and desirable, an act should be passed enabling the Board of Supervisors to exercise proper discretion and authority in the matter."

June 17.

**Veto of Senate bill, entitled "An act to amend chapter 818 of the laws of 1866, entitled 'An act to create a separate road district in the town of Middletown, Richmond County.'"**

"This bill amends the act creating a separate road district in the town of Middletown, Richmond county, by providing that the Commissioner of highways, 'shall have power and he is hereby authorized to widen, alter, enlarge and lay out any and all roads now in use in said road district, to the width of three rods, and to macadamize the same.'

This involves a disregard of the rights of the people to regulate their local affairs, which seems to me to be unjustifiable. If the people desire to have 'any and all roads' macadamized they are quite competent to make the necessary provision therefor, and it is unjust for the Legislature to force them to make such improvements against their will."

June 18.

**Veto of the following items in Assembly bill, chapter 571, entitled "An act making appropriations for the payment of certain awards by the State Board of Audit."**

"'For Timothy J. Sullivan, eight thousand three hundred and forty-six dollars and eighteen cents.'

This item is objected to, and not approved, for the reason that it is believed the claim should not have been allowed by the Board of Audit.

Mr. Sullivan contracted with James W. Eaton, Superintendent of the New Capitol, August 8, 1874, to furnish rolled iron beams, riveted plate and box girders, &c., for the New Capitol, under certain specifications. It appears that in executing the contract Sullivan was unable to furnish the material of the exact dimensions specified, and could only procure material slightly under or in excess of the specifications. The architect refused to receive material below the standard; hence it became necessary for Sullivan to furnish the heavier material.

After the execution of the contract on the eighth of November, 1875, this account was audited by Superintendent Eaton for $59,961.82, from which were deducted former payments of $53,000, leaving a balance of $6,961.82, for which amount a certificate was given by the New Capitol Commissioners, which was liquidated by the Comptroller by warrant dated November 23, 1875, to which is attached the following affidavit:

STATE OF NEW YORK, } ss.:
ALBANY CITY AND COUNTY, }

T. J. Sullivan, of Albany, New York, being duly sworn, deposes and says, that the account rendered and the articles specified in the annexed bill, iron beams and girders furnished in accordance with the contract, $59,961.82, were actually furnished as charged to the 'New Capitol Commissioner,' for the use of the State; that the amounts stated therein are the true and correct amounts due for the said articles, and that the prices charged for the said articles as stated in said account are the fair cash market prices for the same, as this deponent believes, and that the quantities and amounts are correctly stated in said account.

(Signed) T. J. SULLIVAN.

Subscribed and sworn to this 23d day
of November, 1875, before me
(Signed) HENRY GALLIEN.
Notary Public, Albany, New York.

The following receipt is also attached to the warrant:

'TREASURER'S OFFICE,
State of New York.

Received from Thomas Raines, Treasurer of this State, sixty-nine hundred and sixty-one dollars and eighty-two cents in full of the above warrant.

(Signed) T. J. SULLIVAN.'

Albany, November 23, 1875.

It thus appears that Mr. Sullivan's claim under this contract was duly audited and paid.

One of the conditions incorporated in the contract aforesaid, is as follows:

'It is further agreed between the said parties that this contract is entered into upon the condition that the said party of the second part shall not apply to the Legislature for any compensation over and above the prices named in this contract for any beams, girders or other material delivered.'

Article 3, section 24 of the Constitution says:

'The Legislature shall not * * * * * * * grant any extra compensation to any public officer, servant, agent or contractor.'

It seems, therefore, that there are three several reasons why this claim should not be allowed:

1st. Because the account was audited and settled by the New Capitol authorities, and liquidated by the financial officer of the State upon an unqualified receipt from Sullivan.

2d. That Sullivan stipulated in his contract, not to apply to the Legislature for any compensation over and above the prices named in the contract.

3d. Because of the constitutional prohibition against allowing extra compensation to any contractor.

'For Allen Rutherford, two thousand six hundred and three dollars and ten cents.'

This item is objected to, and not approved, for the reason that the 9th Militia Regiment was assisted by the Union Defence Committee of the city of New York for clothing, equipment, outfit and rations to the amount of $33,791.49, being at the rate of $40 *per capita* for 850 men.

The following statement of amounts expended by the Union Defence Committee in aid of the several New York City Militia Regiments, shows that the 9th Regiment, to which Captain Rutherford's Company belonged, received a much larger sum than any of the other Regiments, viz:

### NEW YORK STATE MILITIA.

| | |
|---|---|
| 2d Regiment, Colonel Tompkins, clothing, equipment, outfit and rations............ | $25,246.96 |
| 5th Regiment, Colonel Schwarzwaelder, clothing, equipment, outfit and rations......... | 9,575.19 |
| 6th Regiment, Colonel Pinckney, clothing, equipment, outfit and rations............. | 2,950.00 |
| 8th Regiment, Colonel Lyons, clothing, equipment, outfit and rations................ | 14,200.63 |
| 9th Regiment, Colonel Stiles, clothing, equipment, outfit and rations................ | 33,791.49 |

| | |
|---|---|
| 12th Regiment, Colonel Butterfield, clothing, equipment, outfit and rations............ | $14,383.83 |
| 55th Regiment, Colonel Le Gal, clothing, equipment, outfit and rations............ | 4,341.44 |
| 69th Regiment, Colonel Corcoran, clothing, equipment, outfit and rations............ | 25,518.83 |
| 71st Regiment, Colonel Martin (late Vosburgh), clothing, equipment, outfit and rations............................ | 10,417.00 |
| 79th Regiment, Colonel Cameron, clothing, equipment, outfit and rations............ | 16,911.60 |
| Total.............................. | $157,336.97 |

It therefore appears that liberal, and, indeed, generous assistance was provided for the regiment, which ought to have been abundant for the purpose indicated.

In his testimony before the Board of Audit, Captain Rutherford says: 'In 1872 or 1873 General Stonehouse and General Franklin Townsend were settling the claims of the State of New York then coming before my office (Rutherford at the time being third Auditor of the United States Treasury Department), and I mentioned the fact of my having disbursed these moneys; they suggested that I get up a bill and present to the Legislature. In accordance with that suggestion I handed all the bills to General Townsend, who presented the matter to the Legislature.'

Thus it appears that Rutherford had allowed the matter to remain eleven or twelve years before it ever occurred to him to make any claim.

In view of all these circumstances, it appears to me that the claim is of very doubtful validity, and should be subjected to more careful consideration than it has yet received."

June 19.

**Veto of Assembly bill entitled "An act to amend section 2 of title 1 of chapter 13, part 1, of the Revised Statutes."**

"This bill was intended to provide a broader basis of assessments for taxation. Unfortunately, however, by an error in construction, it is made to specially exempt several classes of property which are proper subjects of taxation, and which it was doubtless the intention of the Legislature to make liable to assessment.

In attempting to amend the bill so as to 'except street surface railroads,' the exception is made to apply also to 'all gas, oil, steam heat, and water pipes owned by any incorporated company, including such pipes laid in any public street or place, and telegraph poles, and wire, wires and other fixtures used for electrical light or for telegraph companies,' and evidently defeats, to a considerable extent, the object of the bill.

As the subject treated is the very basis of a large proportion of the public revenue, it is deemed imprudent to incorporate into the statute a provision of doubtful interpretation and thus invite and promote litigation in regard to the validity of assessments. It seems wiser to allow the matter to go over to the next Legislature, when the amendment can be carefully perfected and made to accomplish the desired purpose."

June 21.

**Memorandum filed with Senate bill, chapter 572, entitled "An act in relation to unpaid taxes and assessments in the city of Brooklyn," approved.**[23]

"This bill has been the subject of especially careful consideration from the fact that while its approval has been earnestly advocated by many citizens of Brooklyn, it has been strongly opposed by others. The weight of evidence, however, appears to be decidedly in favor of its passage, although certain of its provisions seem susceptible, perhaps, of conflicting interpretation. The most serious fault rests with that portion of the second section which reads as follows: 'Or the person liable, having paid one or more installments, as provided in this section, may pay the balance remaining unpaid at any time, with interest at the rate of six per centum per annum from the said first day of October, 1880, and whenever full payment shall be made, the liens as aforesaid on such lands shall be discharged, as in this section provided.'

---

[23] Another act relating to Brooklyn taxes was passed in 1881, chapter 443, which contained provisions obviating, at least in part, the Governor's objections to the bill of 1880.

It was probably the intent of the Legislature to permit the payment at any time within five years, and it is presumed the courts would so interpret the meaning of this provision. It ought not to be necessary, however, to allow the question to become a matter of litigation. No issue can arise under this clause before October, 1881, and an amendment by the next Legislature, making it more definite, will be quite as effective as though incorporated in the present bill.

The final clause of the second section is also somewhat obscure in its language; but careful reading seems to render its meaning quite evident, and it does not appear liable to misconstruction.

The main argument advanced by the opponents of the bill is, that it will largely increase the permanent debt of the city, by converting temporary certificates of indebtedness into long bonds. The argument would be valid if the city enjoyed a revenue adequate to the liquidation of the certificates. This, however, is not likely to be realized without a considerable increase in the rate of taxation. A very large amount of property is now hopelessly in default, and unless some remedy is adopted by which its taxpaying power can be restored, it will remain a dead weight upon the city. In the earnest hope that the desired result can be accomplished by this bill, and relying upon the Legislature next year for such amendments as will remove any doubtful questions which may arise as to its meaning, it has been approved."

June 26.

**Veto filed with Assembly bill entitled "An act to establish a Code of Criminal Procedure."[24]**

"The Code of Criminal Procedure is regarded in its general features as a meritorious measure, and it has been my earnest desire to approve it. Careful examination, however, convinces me that certain of its provisions should receive further and more deliberate consideration by the Legislature before they are incorporated into the Statutes. This is especially the case in several particulars involving personal and individual rights.

While it is desirable to promote efficiency in the administration of the laws against evil-doers, it is equally important to avoid unnecessary hardships where innocent and lawabiding citizens are concerned. The increase of authority for summary arrest on suspicion both by officers and citizens, which is provided for in the Code, is a marked encroachment upon the rights of individuals, and is liable to great abuse. Furthermore, the limitation of opportunity to furnish bail in cases of arrest, is an abridgment of personal rights calculated to work great injustice, even if it does not impair the constitutional protection guaranteed to every citizen in the privilege of the writ of *habeas corpus*.*

Authority is also conferred upon an officer, who, suspecting that a person charged with felony may be in a dwelling house or other building, to enter without warrant, and 'break open an outer or inner door or window.' If the officer has reasonable cause for believing that the suspected person has committed a felony, he 'is justified in making the arrest, though it afterward appear that a felony had not been committed.' In many cases such authority might produce good results, but it also affords unreasonable license for the invasion of a private domicile, and, in my opinion, cannot be justified as a matter of public policy.

---

[24] Another Criminal Code bill was passed in 1881, and became a law, chapter 442, on the 1st of June.

* Const. 1846, art. 1, § 4; U. S. Const. art. 1, § 9, clause 2.

In narrowing the privilege of sanctity in cases of confession of crime, which now exists, the opportunity of securing State's evidence from participants in criminal acts is reduced in a large degree. Disclosures of this character are frequently the only resources of evidence in crimes of the most flagrant type, and should remain available to secure the ends of justice.

Other provisions of the bill are open to serious objection, but those cited are sufficient to indicate the importance of closer scrutiny into the details of the measure, and induce me to withhold my approval. The date fixed for the Code to take effect is September first, 1881, and is sufficiently remote to enable the Legislature to again pass upon the subject, and still leave several months of time for the Courts, the legal profession and the people to familiarize themselves with the new law, before the time designated."

June 28. The omnibus veto included the following bills:

Amending act to revise the charter of the city of Buffalo.

Relative to water supply of Deer river, Lewis County.

For the construction of a canal bridge at Tonawanda.

Amending act relative to the Society for the Protection of Destitute Roman Catholic Children.

Revision and consolidation of poor laws.

Relative to the admission of persons, not paupers, into asylums.

Providing for the verification of pleadings in justices' court.

Relative to incorporation of Red House Driving Park Agricultural Society.

For the incorporation of National Guard Mutual Relief Association.

For incorporation of the Governor's Guard.

To incorporate the Rochester Electro-Medical Institute.

To change the name of the Elmira Female College.

Amendatory of act conferring further powers upon boards of supervisors.

Amending act relating to the care and custody of the insane.

Fixing the amount to be paid on a policy of insurance.

Relative to taking fish from Wallkill river.

For the improvement of certain rivers and to facilitate the running of logs down the same.

Incorporating the Knights of the Maccabees of the World.

Amending section 2, title 1 of chapter 13 of the Revised Statutes defining land.

For the relief of Theodore P. Ballou.

Relative to sale of property for unpaid taxes in Steuben county.

Amending Revised Statutes relative to officers chosen at certain elections.

Exempting certain counties from chapter 733 of the laws of 1872.

Authorizing the county clerk of Richmond county to record certain papers.

For the building of a canal bridge upon Genesee street in Utica.

In relation to One Hundred and Eleventh street in the city of New York.

In relation to opening, regulating, &c., 126th and 127th streets in the city of New York.

For the relief of Bridget Gray.

Relative to the Public Exchange in the city of New York.

Amending act creating separate road district in the town of Middletown, Richmond county.

In relation to companies insuring steam boilers.

To incorporate Excelsior Hose Company of Warwick.

For the protection of fish in Monroe county.

Amending the general law relative to fire insurance.

Repealing act relating to the pay of certain town officers in Sullivan county.

For the relief of Mary A. Van de Water.

To incorporate the Bachelor Club of the city of New York.

For the relief of James E. McVeany.

Relative to certain claims in abating nuisances in Buffalo.

Establishing the compensation of the county judge of Rockland county.

Legalizing the official acts of Daniel P. Cornell as notary public.

Rebuilding Fulton Market in the city of New York.

To incorporate the Grand Council of the Royal Arcanum.

Relative to the organization and regulation of certain business corporations.

To legalize the acts of Franklin C. Whitney as a notary public.

Relating to Independence river.

Legalizing the acts of Samuel Williams, a justice of the peace.

Amending the game law.

Preventing the sale of adulterated vinegar.

Relative to Telegraph companies.

In relation to the harbor and port of New York.

Amending general law relating to public instruction.

Relative to apple barrels.

For the enlargement of a canal bridge at Fultonville.

Relative to the estate of George Bright, deceased.

To incorporate the order Germania.

To make effectual judicial decrees against unknown owners.

Relative to criminals and commutation of their sentences.

Authorizing trustees of religious corporations to appoint constables.

Relative to the superintendent of the poor of Westchester county.

For the better security of the bonds of public officers.

For the relief of the sureties of trustees, committees and guardians.

Amending the game law.

Relative to the superintendent of the poor of Columbia county.

Relative to making good deficits in capital of banking institutions.

Repealing act relating to draining certain low-lands in Orange county.

Relating to the printing of the Code of Criminal Procedure.

To encourage the improvement of steam propulsion on the Champlain canal.

For the relief of Babette Stemmler.

For the relief of George W. Morton.

Requiring banks and banking associations to redeem and retire their circulating notes.

Relating to the title of personal property.

To except Sullivan county in reference to the appointment of poorhouse keepers.

Relating to the election of certain school officers in certain school districts.

Relative to the incorporation of villages.

Of distraining cattle and other chattels.

To transfer the duties of the bonding commissioners of Poughkeepsie.

Relating to rural cemetery associations.

To incorporate the "Empire Yacht Club."

For the relief of Isaac Piser.

To incorporate the Grand Lodge Knights of Honor.

Relating to the M. E. Church Home in the city of New York.

For the election of a messenger for the common council of Brooklyn.

Relating to macadamizing the highways in the village of Piermont.

Relating to the protection of female employees in the cities of New York and Brooklyn.

Relating to arrears of rents and charges for Croton water in the city of New York.

Relating to marshals in the city of New York.

To abolish the office of railroad commissioner in any town.

Relating to the laying out of public roads.

In relation to the State Board of Audit, and to define its powers.

Amending an act to provide for the incorporation of bridge companies.

To legalize certain proceedings of the common council of New York city.

Amending the charter of the city of Yonkers.

The Code of Criminal Procedure.

Repealing certain acts and parts of acts relating to the city of New York.

**1881. JANUARY 4. LEGISLATURE, ONE HUNDRED AND FOURTH SESSION.**

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## ALONZO B. CORNELL, Governor.

# ANNUAL MESSAGE.

## STATE OF NEW YORK:

EXECUTIVE CHAMBER,
ALBANY, *January* 4, 1881.

To the Legislature.—As the representatives of the people, intrusted with the important duty of making laws for their government, you are cordially welcomed to the halls of legislation. The circumstances under which you meet are extremely auspicious. The exceptional prosperity which under the favor of Divine Providence has attended our people during the past year is a cause of especial congratulation. Never, perhaps, in the history of the State has a single year been so fruitful in beneficent results. Almost every material interest has prospered in a remarkable degree. Agriculture, commerce and the manufactures have alike enjoyed the advantages of renewed activity. Labor has been in ready demand, and has received increased reward; while comfort and contentment have found abode in many hitherto cheerless homes.

The influences which have thus contributed to the individual well-being of our citizens have also been conducive to a favorable condition of public affairs. The peace and good order of the State have been preserved without interruption, while we have passed through a political contest of more than usual interest and excitement.

In entering upon the duties and responsibilities of a new year, it is proper that we should reverently acknowledge our obligations to the Supreme Being for the manifold blessings so generously bestowed upon us in the past, and humbly invoke His continued protection and guidance.

## FINANCES.

It is gratifying to be enabled to inform you that the financial condition of the State is eminently satisfactory. The revenues have been sufficient to meet all current liabilities, besides contributing $600,000 to the Sinking Fund, and leaving the surplus on hand $250,000 larger than at the close of the previous fiscal year. The following statement exhibits the transactions of the financial department for the past fiscal year, and the general condition of the State Treasury on the 30th of September, 1880:

### RECEIPTS AND PAYMENTS.

| | |
|---|---|
| Aggregate balances in the Treasury of all the funds October 1, 1879 | $4,518,356.41 |
| Aggregate receipts during the fiscal year ending September 30, 1880 | 11,835,570.93 |
| | $16,353,927.34 |
| Deduct payments during the year | 12,905,711.96 |
| Balance in the Treasury Sept. 30, 1880. | $3,448,215.38 |

| | |
|---|---|
| The amount of receipts into the Treasury on account of the General Fund revenue, during the year ending September 30, 1880 | $5,859,566.20 |
| The payments | 6,290,418.91 |
| Apparent deficiency, September 30, 1880 | $430,852.71 |

### SUPPLEMENTARY STATEMENT.

| | | |
|---|---|---|
| Balances due from county treasurers, Sept. 30, 1880, on State tax of 1879 | | $222,606.92 |
| Add amount paid on account of 1880 appropriations, included in tax levy, payable into the State treasury in April and May, 1881, of which $590,000 are for new Capitol | | 1,069,065.39 |
| | | $1,291,672.31 |
| Deduct apparent deficiency of the revenue, Sept. 30, 1880, as shown in preceding statement | $430,852.71 | |
| Also balances of 1879 appropriations unpaid and in force September 30, 1880 | 208,059.99 | |
| | | 638,912.70 |
| Actual surplus September 30, 1880 | | $652,759.61 |

### DEBT.

On the 30th September, 1879, the total funded debt was $9,122,054.87, classified as follows:

| | |
|---|---|
| General Fund (representing Indian annuities) | $122,694.87 |
| Canal | 8,988,360.00 |
| Bounty | 11,000.00 |
| | $9,122,054.87 |

On the 30th September, 1880, the total funded debt was $9,114,054.87, classified as follows:

| | |
|---|---|
| General Fund (representing Indian annuities) | $122,694.87 |
| Canal | 8,988,360.00 |
| Bounty | 3,000.00 |
| | $9,114,054.87 |

The General Fund State debt is all paid, and the item of $122,694.87 included above, represents the amount required to yield, at the rate of six per cent, the sum necessary to pay the Indian annuities. The balance of $3,000, Bounty debt, for which funds are provided, had not been presented for redemption at the close of the fiscal year. A balance of $2,051,480.17 in the Canal Sinking Fund leaves the amount of that debt, unprovided for, September 30, 1880, at $6,936,879.83.

| | |
|---|---|
| The State debt on the 30th September, 1879, after deducting the unapplied balances of the Sinking Funds, amounted to | $7,659,426.39 |
| On the 30th of September, 1880 (including $122,694.87), to | 7,059,574.70 |
| Showing net contribution to Sinking Fund of | $599,851.69 |
| The actual reduction of the debt during the same period by cancellation being | $8,000.00 |

## TAXATION.

For the current fiscal year the tax levy is at the rate of 3½ mills, which is expected to produce the sum of $9,232,542.33, while that of the previous year, being at the rate of

2 863-1000 mills, produced $7,690,416.34. The increase in the tax levy for the current year became necessary to meet the appropriations of $1,600,000 for the New Capitol.

The laws for the assessment of property as a basis for taxation have long been a cause of dissatisfaction to the people. In my first annual message the necessity of a revision of these laws was presented, and the last Legislature devoted much attention to the subject; but, unfortunately, no adequate measure of relief was perfected.

A single fact will demonstrate the importance of this subject. In 1869 real estate contributed 78 per cent of the public revenue, and personal property paid 22 per cent; while in 1879 the real estate was made to pay 87 8-10 per cent, and personal property only 12 2-10 per cent of the whole tax. It would be difficult to show that the value of personal property has not increased to a larger extent in the past ten years than real estate. Indeed, it is claimed by persons well qualified to judge, that the value of personal property at the present time is quite equal to a fair valuation of the real estate.

Taxes should be fairly and impartially assessed, in order that the expenses of government be equitably apportioned among all citizens. It is a notorious fact that the present laws are so defective in their operation that a portion of the taxpayers are permitted to escape their just proportion of the public charges, while onerous and unfair burdens are laid upon others.

The subject is one which directly affects the interests of all classes, and deserves prompt consideration. It is hoped that you will bestow upon it such attention as its importance demands, and that you may succeed in removing all cause of complaint.

Several measures were enacted by the last Legislature designed to create new sources of revenue by levying specific taxes upon corporations. These laws have not yet come into full effect, but they have already begun to make their contributions to the State Treasury. The receipts from these sources up to the close of the last fiscal year, September 30, amounted to $141,127.03. The Comptroller estimates that when in entire operation a revenue of $2,000,000 per annum may be expected.

Some amendments are required to perfect these laws and secure their complete enforcement. The Comptroller will present in his annual report the details of such changes as the experience of the finance department renders desirable.[1]

## CANALS.

The canals have shared the general prosperity, and carried a largely increased tonnage; greater than in any previous year, save only 1871 and 1872.

The revenues of the canals for the year ending September 30, 1880, were as follows:

| | |
|---|---|
| Tolls | $1,183,352.74 |
| Rent of surplus water | 2,177.08 |
| Miscellaneous | 14,604.81 |
| Total | $1,200,134.63 |
| Total expenses for ordinary repairs, superintendence, and collection of tolls | 889,015.84 |
| Surplus revenues of the canals for the fiscal year ending September 30, 1880 | $311,118.79 |

---

[1] The corporation tax act of 1880, chapter 542, was amended by chapter 361, passed May 26. Chapter 477, passed June 8, provided for the taxation of banks and moneyed capital engaged in the business of banking, receiving deposits or otherwise. For report of tax commission 1880–1881, see special message of May 26.

A comparison with the previous year shows the following result:

| | |
|---|---|
| A gain in revenue of | $278,881.82 |
| Increase in expenses | 137,241.02 |
| Gain in net revenue | $141,640.80 |

The amount necessary to meet the constitutional requirements in regard to the canal debt for the year is as follows:

| | |
|---|---|
| For interest on canal debt | $538,902.00 |
| For the Sinking Fund | 450,000.00 |
| Total | $988,902.00 |
| Surplus revenues realized | 311,118.79 |
| Deficiency for year ending September 30, 1880 | $677,783.21 |
| Add deficiency in tax 1879 | 24,807.46 |
| Add for interest on these deficiencies until the same can be realized from taxes | 56,207.25 |
| Total amount to be supplied by tax | $758,797.92 |

The canals were suddenly closed by ice in November, and more than one thousand boats were arrested in their passage. Of these, seven hundred and forty-six were loaded with grain for tide water, containing, approximately, six millions of bushels.

The near completion of the enlargement of the Canadian canals renders the future of the Erie canal a subject of much concern, and well worthy of your intelligent consideration. If the enterprise of our neighbors in improved navigation is liable to place us at a disadvantage in competing for the carrying trade of the great West, it is high time that a remedy be sought to avert possible misfortune.

The State Engineer entertains the opinion that the capacity of the Erie canal can be largely increased at comparatively small cost by raising the banks, thus providing for an additional foot of water. He will present the question in detail in his annual report, to which your careful attention is respectfully directed.

The condition of the abandoned canals has become detrimental to the health of the people residing near them, and is the cause of serious complaint. Numerous cases of malarial fever have occurred, many of which proved fatal. Some legislation is necessary to authorize an abatement of the evil.[2]

## PUBLIC EDUCATION.

The interests of public education made gratifying progress during the past year. The attendance at school was largely increased; more teachers were employed, and the character of instruction was especially improved; and all at relatively less expense than for the previous year. These are hopeful indications for the growth of intelligence and the welfare of society. The maintenance of a well-ordered system of education, free to all who desire to enjoy its advantages, must certainly prove of incalculable benefit to the future interests of the State.

The liberal education of the children who are to be the men and women of the next generation will, more than all else, insure the future greatness and continued pre-eminence of the Empire State. Public education is also a measure of public economy, for, as intelligence is the best antidote for vice and crime, the expenditures for education will lessen the demands for charity and correction.

---

[2] Chapter 593, passed June 28, 1881, contained provisions intended to remove the causes of malaria and danger to the public health from a portion of the abandoned Chemung and Genesee Valley canals. The Superintendent of Public Works was required to make certain improvements by way of drainage and otherwise, under the advice and direction of the State Board of Health. The act appropriated $6,000.

The last Legislature enacted a law making women eligible to vote at school meetings, and to serve as school officers. In many localities women have already participated in school meetings, and in numerous instances they have been elected trustees. The measure has greatly increased the interest in school management, and must inure largely to the welfare of the schools. Some confusion exists in regard to the qualification of voters at school meetings, growing out of conflicting laws. This should be remedied by the enactment of a comprehensive act defining the rights of all participants in school matters.[3]

The following statement, furnished by the Superintendent of Public Instruction, contains interesting statistical information in regard to the public schools:

### COMMON SCHOOL STATISTICS.

For the year ending September 30, 1880:

| | |
|---|---|
| Total receipts, including balance on hand September 3, 1879 | $11,390,888.16 |
| Total expenditures | 10,296,977.26 |
| Amount paid for teachers' wages | 7,638,921.88 |
| Amount paid for school houses, repairs, furniture, etc. | 1,145,831.15 |
| Estimated value of school houses and sites | 30,747,509.00 |
| Number of school houses | 11,899 |
| Number of school districts, exclusive of cities | 11,263 |
| Number of teachers employed for the legal term of school | 20,596 |

---

[3] The qualifications of voters at school meetings were defined by chapter 492, passed June 13.

| | |
|---|---|
| Number of teachers employed during any portion of the year | 30,730 |
| Number of children attending public schools. | 1,031,593 |
| Number of persons attending Normal schools. | 5,753 |
| Number of children of school age in private schools. | 108,567 |
| Number of volumes in school district libraries | 736,653 |
| Number of persons in the State between the ages of five and twenty-one years. | 1,641,173 |

## STATE PRISONS.

The experience of another year in the management of the State prisons has further vindicated the wisdom of the constitutional amendments in reference thereto.[a] With the improved condition of the times the number of prisoners is gradually being reduced, as will be seen from the following comparative statement.

The average number of prisoners in the Clinton, Auburn, and Sing Sing Prisons for the last three years is as follows:

| | |
|---|---|
| 1878–9. | 3,379 |
| 1879–80. | 3,062 |
| 1880–1. | 2,970 |

The earnings and expenditures of the several State prisons for the fiscal year ending September 30, 1880, were as follows:

### SING SING.

| | | |
|---|---|---|
| Earnings. | $217,028.69 | |
| Expenses | 184,277.69 | |
| Surplus. | | $32,751.00 |

---

[a] Const. 1846, art. 5, § 4, am. 1876.

### AUBURN.

| | | | |
|---|---|---|---|
| Earnings | $114,925.00 | | |
| Expenses | 130,108.75 | | |
| Deficiency | | $15,183.75 | |

### CLINTON.

| | | | |
|---|---|---|---|
| Earnings | $54,952.46 | | |
| Expenses | 90,606.69 | | |
| Deficiency | | 35,654.23 | |
| | | | 50,837.98 |
| | | | $18,086.98 |

### BANKS.

The Superintendent of the Bank Department reports that sixty-eight banks of discount and deposit were doing business under the laws of this State, on the 1st day of October, 1880, at which date their condition was as follows:

| | |
|---|---|
| Resources | $99,850,755 |
| Capital | 18,738,200 |
| Surplus profits | 8,058,280 |
| Due depositors | 61,795,773 |
| Other liabilities | 11,258,502 |

During the year deposits increased $9,536,184; profits, $821,715; loans and discounts, $12,328,180. The net aggregate increase in assets was $13,157,573. Six banks closed during the year, four of which went into voluntary liquidation, one converted into a National bank, and one failed. One new banking association was formed during the year.

One hundred and twenty-eight savings banks reported July 1, 1880, eleven of which do not receive deposits and have only a nominal existence. Three went into voluntary liquidation, paying depositors in full.

The condition of the savings banks on the date named was as follows:

| | |
|---|---|
| Resources | $376,211,240 |
| Due depositors | 335,461,570 |
| Surplus | 40,543,454 |
| Other liabilities | 206,216 |
| Number of depositors | 912,863 |

The increase in the several items during the past year was as follows:

| | |
|---|---|
| Resources | $34,842,553 |
| Deposits | 30,769,230 |
| Surplus | 4,216,524 |
| Number of depositors | 85,011 |

The exceptionally large increase in deposits and number of new accounts is evidence not only of the increasing thrift and prosperity of our people, but of the complete restoration of public confidence in the management of these beneficent institutions.

Of trust, loan and mortgage companies, twelve institutions are in operation, having $11,377,375 capital and $96,713,717 of resources. Also eight corporations for the safe keeping and guarantee of personal property, with aggregate capital of $1,376,900.

## INSURANCE.

Statistics furnished by the Insurance Department indicate that the condition of the several insurance companies doing business in this State has improved during the past year.

Of fire insurance companies one hundred and sixty-seven are now doing business in this State, as follows:

New York, 87; other states, 58; foreign, 22; with total assets of $143,248,869; liabilities, including capital stock, $94,107,073; net surplus, $49,146,966. The gross cash income of these companies for the year was $60,548,160, and their gross cash expenditure $58,822,513.

Of life insurance companies organized under the laws of this State, there are twelve now conducting business, with aggregate assets of $202,562,831; liabilities, $169,675,366; surplus to policy holders, $32,887,465; and nineteen other State companies, with assets of $198,952,961; liabilities, $166,562,705; surplus, $32,390,256. Eighteen marine insurance companies are doing business in this State (seven of which are organized under the laws of New York) with assets amounting to $20,147,902, and a net surplus of $3,565,707; and four casualty insurance companies, with assets amounting to $1,800,000, and a net surplus of $271,000.

In the tables adopted by the laws of this State for the purpose of calculating the reserves on life insurance policies, the rate of interest assumed is 4½ per centum. In view of the present market value of 4 per cent Government bonds and the general tendency to a lower rate of income upon all first class securities, it becomes an important question whether the law should not be so amended as to provide a calculation upon a rate not higher than 4 per centum, and thus increase the amount of reserve required to be held to meet maturing claims of life insurance companies.[4]

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[4] This reduction was made by L. 1884, chapter 341, and the same rule was afterwards included in the insurance law of 1892, chapter 690. For the purpose of calculating life insurance reserves the rate of interest was fixed at four per cent.

## NATIONAL GUARD.

The National Guard comprises six divisions, eleven brigades, twenty-one regiments, five battalions and thirty-six separate companies of infantry, eight separate troops of cavalry and ten separate batteries of artillery, making in the aggregate 18,102 officers and enlisted men.

In the belief that a considerable reduction of the force would prove beneficial, orders were issued during the past year for the disbandment of some of the weaker organizations; under which the following have been disbanded: 7th Division; 2d and 12th Brigades; 49th and 54th Regiments; 15th Battalion, 2d and 8th Separate Companies of Infantry; 3d Regiment and Troops H and K, Cavalry; and Batteries H and C, Artillery.

In my opinion the National Guard needs still further reduction and a more thorough organization of the remainder, which it is hoped will be accomplished by the bill, should it become a law, which the commissioners appointed pursuant to chapter 546 of the Laws of 1880, will in due time report to the Legislature.[5]

## THE NEW CAPITOL.

The work on the New Capitol building has, under the liberal appropriations of the last Legislature, made marked progress during the past season. Every effort has been made by the Commissioners to complete the apartments designed for the Senate and Executive Department, in anticipation of the meeting of the Legislature, as required by law; but unforeseen obstacles have prevented the full realization of this object. These sections of the edifice are, however, well advanced, and it is confidently expected that they will be fully completed within a very few weeks.

The financial transactions of the Commissioners for the current year have been as follows:

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[5] See 1880, note 5, *ante*, p. 428. A new military code was enacted in 1883.

| | |
|---|---|
| There was on hand January 1, 1880, an unexpended balance of previous appropriation | $73,169.62 |
| Chapter 33, Laws of 1880 | 100,000.00 |
| Chapter 138, Laws of 1880 | 1,500,000.00 |
| | $1,673,169.62 |
| Expended during the year 1880 | 1,251,989.02 |
| Balance on hand | $421,180.60 |

Nearly if not quite all of this amount will be required to pay balances which will become due on contracts when completed, and other expenditures not yet reported.

A serious defect was recently discovered in the groined arch above the Assembly Chamber. A large stone in one of the ribs of the arch was found to have been fractured and completely severed. Notwithstanding a thorough investigation, the Superintendent has been unable to make any satisfactory explanation of the cause. The broken stone has been removed, and it is hoped that no further trouble will occur. It will be well, however, for the Legislature to satisfy itself of the present safety of that portion of the building.[6]

## CANAL APPRAISERS.

Although the canal system has long been completed, a large number of claims against the State for damages on account of the construction and use of the canals are still pending; and many new ones are annually presented. During the past year two hundred and twenty-five new claims were filed, amounting to $428,820. One hundred and nine claims have been passed upon by the Canal Appraisers, in which $311,384 were claimed as damages. There were allowed thereon $32,805.22. At the close of the fiscal year eight hundred and eighteen claims were still pending. The amount awarded the past year is somewhat in excess of the year before, from the fact that a number of larger claims of many years standing were finally disposed of. The amount of awards for the past five years was $146,466 against $1,364,191 for the preceding five years. This gratifying result is due to the constitutional[b] and statutory safeguards which have been adopted, and a more thorough investigation of claims by the Appraisers.

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[6] Chapter 24, passed March 2, 1881, appropriated $100,000 to be used towards the completion of the Senate and Executive chambers, also $150,000 for stone work on existing contracts.

Chapter 325, passed May 20, appropriated $750,000 to continue work on the New Capitol. The same act provided for the demolition of the Old Capitol building and appurtenances.

On the 14th of July the Governor vetoed a bill which appropriated $500,000 for continuing work on the exterior walls of the New Capitol.

## RAILROAD TRANSPORTATION.

The last Legislature devoted a large part of its session to the consideration of measures designed to remedy certain evils in railroad management. The two Houses having failed to agree, the unsatisfactory condition of this important subject still continues, and should receive your thoughtful attention. Aside from public taxation, perhaps, no question so seriously touches the interests of the people at large. Every community and all branches of business are directly affected by it. Unjust discriminations in the rates of transportation cause embarrassment and unnatural competition. Favoritism for one interest results in hardship to another. Stability and uniformity in freight tariffs are necessary for the safe conduct of business. Not only should equality of service be rendered to all citizens, but as well to all communities. For like service all patrons should be placed upon an equal footing; and as far as practicable, general publicity should be given to freight tariffs.

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[b] Const. 1846, art. 3, § 19, added 1874.

In securing justice for the people it is not necessary that injustice be visited upon the railroads. These enterprises, that have so largely aided the growth and development of the State, are entitled to fair treatment. With the experience of the past as a guide it is to be hoped that your wisdom will be equal to the importance of this question, which should receive a complete and successful solution at your hands.

## CHARITABLE INSTITUTIONS.

The munificent provision made for the care and maintenance of the unfortunate classes in this State may be to some extent appreciated from the following statement.

The property, real and personal, held for charitable purposes in this State may be set down in round numbers as follows:

| | |
|---|---|
| By State institutions | $6,900,000.00 |
| By cities and counties | 6,200,000.00 |
| By incorporated associations | 21,900,000.00 |
| Total | $35,000,000.00 |

The total expenditure during the past year for the support of the several charitable institutions, public and private, reached about eight millions of dollars. The average number of beneficiaries was approximately as follows:

| | |
|---|---|
| In State institutions | 4,800 |
| In city and county institutions | 15,700 |
| In incorporated benevolent institutions | 24,200 |
| Total | 44,700 |

The total number of insane persons in the several State and local asylums, poor houses and private asylums for the years stated, was as follows:

| | |
|---|---|
| October 1, 1880 | 9,543 |
| October 1, 1879 | 9,015 |
| October 1, 1878 | 8,781 |
| October 1, 1877 | 7,921 |

The rapid increase of insanity is truly alarming, both as to the individuals affected and the necessary provision to be made for their care. The average annual increase of insane for the last four years has been four hundred persons. The Buffalo asylum, which has been so far completed as to accommodate three hundred patients, cost about a million and a quarter of dollars, or more than four thousand dollars for each inmate. Such extraordinary expenditures for the care and treatment of the insane seem like a profligate use of the public funds. Whatever future facilities may be required for this purpose should be provided upon a much more economical scale.[7]

## ELMIRA REFORMATORY.

The inmates of the Elmira Reformatory number about five hundred. The gross expenditure for maintenance during the past year was $81,338, while the earnings amounted to $62,657; leaving as the net expenditure of the State for maintenance, the sum of $21,681. Only $6,541 were expended on account of construction during the year. The industries which have been established in the Reformatory are as yet in process of development, hence have not reached the maximum of production. The managers are sanguine that the institution will speedily become self-sustaining. The employment of the inmates is on public account and without the intervention of contractors; which is considered essential to effect the reformatory influences contemplated. It is requisite, therefore, that capital be provided in some form, to furnish the materials necessary to conduct the business of the institution; and this, in the opinion of the managers, should be at least $100,000. The question of providing means to enable the managers of such an institution to conduct business for account of the State is a serious one, and should have deliberate consideration. If this policy is to be adopted, it is all important that the business shall be surrounded by such safeguards as will insure successful and advantageous results. The whole subject is commended to your careful and intelligent attention.

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[7] Chapter 49, passed March 18, authorized the transfer of insane persons from institutions in the city of New York to a State Lunatic Asylum with the consent of the managers thereof. The expense of such transfer and subsequent maintenance in a State Asylum was to be paid by the city.

## COUNTY JAILS AND POOR HOUSES.

The condition of the county jails and poor houses was referred to in my last annual message as urgently demanding the attention of the Legislature. Additional information confirms my views then expressed, and induces me to earnestly recommend your serious consideration of the subject. The report made to the Legislature in March last by the commission appointed to visit the jails and penitentiaries makes an intelligent and concise presentation of the existing abuses, and is well worthy of careful attention. The present condition of many of these institutions is a reproach to the fair fame of the State, and should be reformed without delay.

For several years the proposition to establish reformatories for women has been agitated with growing interest. It can hardly be doubted that such institutions, properly organized and conducted, would go far to remedy existing evils, and save the State from future burdens which, under present circumstances, are inevitable.[8]

## STATE BOARD OF HEALTH.

Pursuant to chapter 322 of the Laws of 1880, the State Board of Health was duly organized, and has made gratifying progress in preparing for the important work before it. Human life is constantly exposed to dangers which intelligent observation should point out and guard against. Besides the needless exposure of human life, it often happens that villages and cities suffer largely in their commercial interests from the prevalence of contagious diseases. Trade is frequently diverted, to the serious detriment of a community, when reasonable precaution would have avoided such a misfortune.

This new agency for protection has been established in response to the demands of an enlightened public sentiment; and great expectations of valuable results await its development. With the active co-operation of the local health authorities in furtherance of the suggestions and advice of the State Board of Health, it is believed that much good will be accomplished.

## EMIGRATION.

The volume of emigration from Europe during the last year has been larger than in any year since 1854. As a rule, the persons landed have been of a character superior to those arriving in previous years; a much greater proportion being possessed of sufficient means to provide comfortably for themselves or their families.

The entire number of passengers landed at the port of New York from foreign countries, from January 1 to December 1, 1880, was 353,545. The number of those who came steerage or third-class and entered at the State Emigrant Depot, Castle Garden, was 306,947; an increase of 180,676 over the previous year.

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[8] Chapter 187, passed May 2, provided for establishing a house of refuge for women to be located outside the counties of New York and Kings. The act appropriated $100,000. The institution was located in the city of Hudson.

The number admitted during the above period to the State Emigrant Refuge and Hospital at Ward's Island, was 3,934; of which 581 remained in the institutions. Of these, 339 are sick in hospital, 115 insane in the asylum, 85 crippled and 42 children. The Castle Garden Labor Bureau found employment, during the year, for 37,942. In view of the extraordinary number of arrivals the past year, the Commissioners are apprehensive that the appropriation for the support of the institutions under their charge will be inadequate to meet the necessary expenses.

It is to be hoped that Congress will be convinced of the propriety of relieving the State of a portion, at least, of this demand.

## QUARANTINE.

In view of the extraordinary number of emigrants and others arriving at the port of New York during the past year, constant vigilance was required to prevent the introduction of contagious diseases.

Nine hundred and sixty-eight vessels arrived from ports subject to yellow fever, and two hundred and ninety-one from ports actually infected. Of these, one hundred and thirty-seven vessels reported sickness at the port of departure or on the passage. Ninety-eight cases of fever were admitted to the Quarantine hospital during the season, of which twenty-seven were yellow fever. Of the latter number, ten died; and of all other cases seven proved fatal and eighty-one recovered. So far as is known no case of infectious or contagious disease has passed the Quarantine.

The Quarantine establishment has been visited during the past year by a number of eminent professional representatives of the Health Departments of other States and countries, who expressed their unqualified approval of its condition and management, and acknowledged the belief that the New York Quarantine was superior to any other.

### HARBOR MASTERS AND PORT WARDENS.

By a decision of the Supreme Court of the United States, that portion of the laws of this State relating to Harbor Masters which authorizes them to collect fees as a remuneration for their services, is held to be unconstitutional.[c] There is, therefore, no legal compensation provided for services which the law still requires to be performed. The status of the Port Warden has likewise been brought into question by decisions of the courts, and their jurisdiction and authority disputed.

If the important duties which the law imposes upon these officers are to be continued, it is obvious that some suitable provision should be made in regard to them.

### EXCISE LAWS.

The interests of good government demand a thorough revision of the Excise laws. The opponents of the liquor traffic, as well as those engaged in the business, believe that a change from the present chaotic condition is desirable. The existing enactments are ambiguous and inefficient in their operation. Conflicting opinions of the courts have added to the confusion. In consequence thereof, the officers who should enforce the laws find themselves paralyzed. For three consecutive years the annual messages of the Governor have contained recommendations for an entire revision of these laws; and the subject is again presented in the earnest hope that it will receive your patient consideration and wise action.

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[c] See Inman S. S. Co. v. Tinker (1876), 94 U. S. 238.

## LOTTERY LAWS.

The Constitution provides that no lottery shall be authorized, or the sale of lottery tickets allowed, within this State.[d] Laws designed to enforce this constitutional mandate have been duly enacted, but have proved insufficient to accomplish the purpose. They have been openly and flagrantly violated; and millions of dollars have been annually extracted from the earnings of the poor. The victims of this iniquitous traffic are mainly of a class needing the protection of the strong arm of law, and it is to be regretted that more vigorous efforts are not made in their behalf.

With ample constitutional authority available to remove this scandalous evil, it is the duty of the Legislature to frame such laws as will be effective in accomplishing the desired object.

## MUNICIPAL AFFAIRS.

Partial steps were taken by the Legislature last year to economize the local governments of New York and Brooklyn. These should be followed by vigorous action in the same direction until the expenses of those cities, still too high by many millions of dollars, are reduced to a reasonable limit. For many years the ingenuity of man has been employed to create new offices and increase the salaries of others. Duties have been divided, while the salaries have been doubled, thus quadrupling the burdens of taxpayers. In many instances property has actually been confiscated under the onerous exactions of the tax levy. It is my deliberate opinion that if one-third of the officials of New York and Brooklyn were mustered out, and the duties properly distributed among those remaining, the public would be better served than at present. The adoption of adequate measures to correct these shameful abuses would secure for the Legislature the lasting gratitude of a long suffering people.

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[d] Const. 1846, art. 1, § 10.

### DISABLED JUDGES.

Embarrassment frequently occurs in the conduct of the courts by reason of the physical disability of judges. A striking instance is now presented in the Superior Court of the city of New York, one of the judges of which court, having been for two years wholly incapacitated, is not likely again to resume official labors. The only present mode of relief is in removal by the Legislature in the cases of judges of the Court of Appeals and justices of the Supreme Court; and by the Senate on the recommendation of the Governor, in the cases of judges of other courts of record.[e] This remedy, designed originally for cases of official or personal misconduct, would seem unduly severe when applied to a faithful judge now prostrate from overwork, as the fact is understood to be in the particular case referred to.

It would manifestly accord more with the dictates of humanity and be commended to popular approval, were special provision made for emergencies of this nature. A continuance of some reasonable portion of the salary of a judge thus removed for physical disability, during the balance of the term for which he was elected, would mitigate the severity of the proceeding to vacate the office.[9]

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[e] Const. 1846, art. 6, § 11, am. 1869.

[9] Governor Cornell probably here referred to Judge Charles F. Sanford of the New York superior court, concerning whom he sent a special message to the Senate on the 30th of March, recommending the removal of the judge on the ground that he had become mentally incapacitated to perform judicial service. This communication was referred to the Senate judiciary committee, but no further action seems to have been taken.

Judge Sanford was not removed, but died in office October 21, 1881.

Governor Cornell's suggestion as to continuing a portion of the judge's salary after his removal for a cause like that presented in the Sanford case was embodied in chapter 62, passed March 29, which provided that upon the

## IMPRISONMENT FOR DEBT.

It is the popular impression that imprisonment for debt was abolished in this State many years ago. Such, undoubtedly, was the intention when the laws to this end were enacted; but unfortunately, as many victims can testify, the object was not attained. The county jail in the city of New York is never free of prisoners detained for debt; and it is not uncommon to find from fifty to seventy-five debtors, so called, confined therein; some of whom have been kept there for years. Instances of imprisonment for claims as small as twenty dollars are not infrequent. Cruel hardship is constantly inflicted in this manner; and it is due the unfortunate subjects of such outrage that the laws regulating imprisonment on civil process be thoroughly revised, and all obnoxious features expunged.

## LOCAL AND SPECIAL LEGISLATION.

One of the greatest hindrances to good legislation consists of the fact that the time and attention of members are too much occupied with the consideration of a multi-

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removal of a judge under article 6, section 11 of the Constitution, for a cause not involving moral delinquency, he should be entitled to receive, during the remainder of his official term, one-half the regular salary, but which one-half should not exceed $3,000. The statute was to apply only in cases where the removal was expressly stated to be for a cause not involving moral delinquency, and where the resolution for removal recommended a continuance of the judge's salary.

At the time of the presentation of the Sanford case, the clause in section 11, article 6, relative to the reasons for removal, was as follows: "But no removal shall be made by virtue of this section, unless the cause thereof be entered on the journals, nor unless the party complained of shall have been served with a copy of the charges against him, and shall have had an opportunity of being heard."

The Constitutional Convention of 1894 modified section 11 of article 6 (removal of judges), so as to include a case where no charges were preferred against a judge, but he had become incapacitated to perform judicial service. The new provision is in the following form:

> "But no officer shall be removed by virtue of this section except for cause, which shall be entered on the journals, nor unless he shall have been served with a statement of the cause alleged, and shall have had an opportunity to be heard."

tude of insignificant local and private bills. These are pressed by special interests, and to a great extent interfere with measures of general import, and often to the prejudice of the public good. A specific constitutional amendment was recently adopted, designed to arrest the mischievous tendency in this direction;[f] but unfortunately, the capability of man to overcome difficulties renders this safeguard less valuable than its framers anticipated. It is unbecoming the dignity of the State to incumber its code of laws with trivial enactments of the character mentioned; and unless the Legislature interpose to check this growing evil, it will become my duty to exercise more rigidly the authority vested in the Executive in such regard.

### THE CONNECTICUT BOUNDARY LINE.

The long-standing controversy in regard to the boundary line between this State and Connecticut has finally been adjusted in accordance with the terms agreed upon by the Commissioners appointed by the Legislatures of the two States. The necessary documents have been officially exchanged by the Executives, who have also united in a petition to Congress requesting the approval and confirmation of such settlement by the United States.[10]

### CONCLUSION.

The importance of the duties upon which you have this day entered may be realized in some measure, by reflecting that the five millions of population which the State now contains will have increased to ten millions in the next generation. Thus the laws which you enact will in near or remote degree affect a vast constituency.

The capital and enterprise of New York penetrate every portion of the Union, and exert a potent influence throughout the civilized world. Every other State is thus made tributary to her growth; and her metropolis is fast becoming a commercial center of the first magnitude. The past career of the State, grand as it is, will be eclipsed by her future development, if good government can be assured. Whatever you may do to lighten the public burdens will go far to promote this great end.

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[f] Const. 1846, art. 3, § 18, added 1874.

[10] See 1878, note 11, for further information relative to the Connecticut boundary matter, *ante*, p. 172.

The honor and welfare of the State are thus committed to your care; its treasury placed in your keeping. You have taken a solemn oath to support the Constitution, and faithfully to discharge the duties involved to the best of your ability. May you be so enlightened and directed by Divine wisdom that this sacred obligation, with all it implies, will be fully discharged.

ALONZO B. CORNELL.

## SPECIAL MESSAGES.

January 12. To the Assembly: Transmitting a statement of the pardons, reprieves and commutations granted during the year 1880.

January 17. To the Assembly: Transmitting a certified copy of an act passed by the General Assembly of Connecticut, appointing a commission to confer with a like commission to be appointed by New York, for the purpose of negotiating a change in the boundary line recently agreed upon between the two States, so as to transfer Fisher's Island to Connecticut.

A concurrent resolution was introduced in the Assembly, proposing a commission to meet the Connecticut commission, for the purpose suggested in the foregoing act, but the resolution does not seem to have been adopted by either house.

January 17. To the Assembly: Transmitting the report of the Board of Commissioners of Pilots.

January 20. To the Assembly: Transmitting the first annual report of the State Board of Health.

January 24. To the Assembly: Transmitting the annual report of the Trustees of the Cooper Union, and the report of the Managers of the Society for the Reformation of Juvenile Delinquents in the city of New York.

January 26. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *January* 26, 1881.

"At the recent annual meeting of the State Agricultural Society, resolutions relating to the disease of cattle, known as pleuro-pneumonia, were adopted, a copy of which, together with a letter from the secretary of the society, is herewith transmitted.

The prevalence of this contagious and fatal disorder seriously menaces agricultural and dependent interests in this State, and in the country at large; and disastrous consequences may be expected unless timely and vigorous steps be taken to prevent its spread into the grazing districts. A subject of such great importance demands, and will no doubt receive, your prompt attention and co-operation. The hope is expressed that Congress will ultimately establish appropriate measures for the suppression of this disease among neat animals; but, meanwhile, suitable provision should be made by the State to arrest its progress.[11]

ALONZO B. CORNELL."

February 1. To the Assembly: Transmitting the report of the Board of Supervisors of the County of Kings, for the year 1880, relative to the condition and management of the buildings in which are maintained persons who are a charge upon said county.

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[11] The Legislature adopted a concurrent resolution requesting the New York senators and representatives in Congress to urge the passage of a law "for stamping out the disease known as pleuro-pneumonia or lung plague of cattle."

Chapter 378, passed May 26, appropriated $50,000 for the purpose of carrying into effect the acts of 1878, chapter 134, and 1879, chapter 306, relative to infectious and contagious diseases of animals.

February 10. To the Assembly: Transmitting the annual report of the Commissioners of Quarantine, and the Health Officer.

February 16. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *February* 16, 1881.

"Pursuant to the concurrent resolution of the Senate and Assembly, authorizing the appointment of a commission to consist of not less than three nor more than seven citizens to consult with and aid the joint committee of the two Houses, already created, in their work of revising and amending the laws of assessment and taxation, the following named persons have been this day nominated and appointed as such commission or commissioners:

Messrs. Joshua M. Van Cott, Kings County; Samuel D. Babcock, New York; Thaddeus Hait, Ulster; Edward W. Foster, St. Lawrence; John F. Seymour, Oneida; George Geddes, Onondaga, and Alonzo Bradner, Livingston. [See note 1.]

ALONZO B. CORNELL."

February 28. To the Assembly:

**Veto of a bill entitled "An act to legalize the action of the Board of Supervisors of Erie county in relation to the compensation of court officers from September 1, 1880."**

"The action of the board of supervisors, which this bill proposes to legalize and confirm, was in directing the clerk of the county to draw orders on the county treasurer in favor of court officers at the rate of two dollars a day, instead of one dollar and twenty-five cents, as provided by law. Nothing could be more positively in conflict with the

Constitution, and the attempt to make such action legal by an act of the Legislature is obviously futile.

Section 24 of the third article of the Constitution declares that 'the Legislature shall not, nor shall the common council of any city, nor any board of supervisors grant any extra compensation to any public officer, servant, agent or contractor.'

The people have taken good care to divest the Legislatures and boards of supervisors of any and all authority of the kind proposed to be exercised in this bill, by securely planting the foregoing very proper safeguard in the fundamental law of the State, where it is safely beyond the reach of legislative enactment."

The bill was not passed over the veto.

## THE SENATE OCCUPIES ITS NEW CHAMBER.

On the 8th of March, a resolution was adopted by the Senate that when it adjourned on the 9th, it should be to meet in the new Senate Chamber on the 10th at 8 P. M.

On the 9th, committees were appointed by the Senate to inform the Governor and the Assembly that it would meet in the New Senate Chamber on the 10th.

On the same day the Assembly appointed a committee of five, to make suitable arrangements relative to the occupancy by the Senate of the chamber prepared for it in the New Capitol. On the 10th the Assembly committee presented the following report:

"To THE ASSEMBLY.—Your committee appointed to make arrangements for commemorating the removal of the Senate from their temporary rooms to the Senate Chamber, beg leave, respectfully, to report as follows:

We recommend that such removal be commemorated by the following observances:

The Assembly will at the close of the morning session take a recess until 7:45 this evening. At 8 P. M. the Assembly will take a recess, and preceded by the Speaker and

Sergeant-at-Arms, will repair to the rooms temporarily occupied by the Senate, and immediately thereafter escort that body to the Senate Chamber. The Assembly will thereupon return to their own Chamber and adjourn.

All of which is respectfully submitted.

J. W. HUSTED,
T. G. ALVORD,
T. BOARDMAN.
TOWNSEND D. COCK,
T. B. SPINOLA."

At eight o'clock in the evening, the Senate met in the room temporarily occupied by it, and was escorted to the new chamber by the Assembly. Remarks were then made by Speaker Sharpe, which were responded to by Lieutenant-Governor Hoskins, President of the Senate. Prayer was then offered by the Chaplain of the Senate, after which the President delivered an address. Remarks were also made by Senators Fowler, McCarthy and Woodin, and by Mr. Alvord, Mr. Husted, and Mr. Brooks, members of the Assembly.

March 17. To the Assembly:

**Veto of a bill entitled "An act to repeal chapter 47 of the Laws of 1879, entitled 'An act authorizing the reduction of pay of certain town officers in the county of Sullivan.'"**

"This bill is in fatal conflict with two separate provisions of the Constitution. Section 18 of the third article prohibits the enactment of a local bill creating, increasing or decreasing the compensation of public officers during their term of service, and section 24 of the same article provides that the Legislature shall not grant any extra compensation to any public officer.

The constitutional objections to the bill could of course be remedied by providing that it should take effect at the expiration of the term of office of the several officers now in service. This, however, would in my opinion be unwise. Many of the towns in Sullivan county are sorely pressed with a heavy burden of indebtedness, and the taxpayers find great difficulty in meeting their present obligations. It would be unjustifiable to increase their burdens by adding to the compensation of public officers. If the present officials are not satisfied with the compensation now provided by law, they have an easy remedy in resigning; and there need be no apprehension lest their places be not readily filled by others competent and willing to discharge all duties pertaining to them."

The bill was not passed over the veto.

March 29. To the Senate:

**Veto of a bill entitled "An act relative to the site for an armory for the National Guard in the county of Kings."**

"The act of 1879, as amended by chapter 418 of the Laws of 1880, making an appropriation for the erection of an armory in Kings County, provides that no part thereof shall be expended until an indisputable title to a suitable site for such armory, free from all incumbrances, shall be vested in the people of this State, without cost to the State.

This bill contemplates evasion or non-fulfillment of the conditions originally specified, by permitting the armory to be erected upon land, the title to which may not be absolutely perfect; in which case the county of Kings is required to refund to the State the sum expended.

In my opinion such contingency should not be anticipated. The first condition upon which public buildings should be constructed is absolute and undisputed title to the sites. If the county of Kings cannot comply with the terms of the appropriation made, then the armory ought not to be built."

The bill was not passed over the veto.

March 30. To the Senate:

"EXECUTIVE CHAMBER,
*March* 30, 1881.

"A petition for the removal of the Hon. Charles F. Sanford, a judge of the Superior Court of the city of New York, is herewith transmitted for your consideration.

Such investigation as has been possible for me to make in regard to this case establishes the following conclusion: For more than two years Judge Sanford has been prostrated and mentally incapacitated, from overwork consequent on the laborious and faithful discharge of official duty, and all hope of ultimate recovery seems now abandoned.

It is admitted by all that he was an upright and diligent judge while in active service, and no word of complaint was ever uttered against him. He won distinction at the bar, and fully sustained the reputation thus acquired when on the bench. It is a matter of sincere regret, therefore, that the Constitution provides no remedy other than removal in cases of this character. Believing, however, that Charles F. Sanford, judge of the Superior Court of the city of New York, as aforesaid, is wholly and irrecoverably disabled by mental impairment, from the further discharge of duties devolving upon him, it is hereby recommended that the said Charles F. Sanford be removed from the office of judge of the Superior Court of the city of New York before mentioned.

Inasmuch, also, as the application for removal is made for cause not involving moral delinquency, it is presumed, and it is hereby respectfully submitted, that in case removal be ordered, the Senate will recommend the continuance of compensation, as in such cases provided by chapter 62 of the Laws of 1881. [See note 9.]

ALONZO B. CORNELL."

April 7. To the Assembly:

**Veto of a bill entitled "An act concerning charitable, benevolent and beneficiary associations, societies and corporations."** [12]

"The bill provides that associations and societies, whether voluntary or incorporated under the laws of this State or any other State or territory, and doing what is known as a co-operative life insurance business, shall be exempt from the operations of the insurance laws, which require reports and authorize the Superintendent to investigate. There is nothing in the insurance laws of New York that prevents the organization or incorporation of beneficial societies, such as Masonic, Odd Fellows, etc., a large number of which are now in undisturbed operation within the State. This bill does not give any more privileges to such institutions of this State than they now enjoy. Its only effect would be to admit hundreds of irresponsible organizations created under the laws of other States, with none of the features that popularize Masonic and Odd Fellows organizations, and render fairly certain the collection of assessments. A large majority of the co-operative companies transacting business in States other than where they were organized are located in Pennsylvania and Ohio. Both of these States require this class of companies to report to the insurance department yearly statements of their condition; and give certain powers to the insurance superintendent to supervise their transactions. Yet it is sought by this act to allow them to come into the State of New York and transact an unlimited business, subject to no law of the State and paying no tax or fee for the permission given.

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[12] This bill relating to co-operative insurance companies was not passed over the veto, but another bill on the same subject, and with the same title, was passed, and became a law, chapter 256, on the 12th of May. The act required the societies and associations included in it, to file with the Superintendent of the Insurance Department annual reports containing information on certain specified topics.

There has lately been published a list of 126 of these institutions which have failed during the past five years. In Ohio a report was recently made by a legislative committee, showing that from 1872 to 1880, ninety-six co-operative companies were organized, of which fifty-six failed. Of those remaining, the income for 1879 was $269,374, death losses $178,703, and expenses $135,685; making total disbursements of $315,677, and thus showing an excess of $46,303 in expenditures over the receipts for the year. More than one-half the receipts were absorbed in expenses alone. It is evident, therefore, that no good but probably much harm would result from the enactment of this bill into a statute.''

April 11. To the Senate:

**Veto of a bill entitled "An act to authorize the Board of Supervisors of Kings County to make suitable provisions to reimburse John Cunningham for all legitimate costs, counsel fees and expenses which were incurred by him in and about a certain action brought against him while holding the office of commissioner of charities of the county of Kings."**

'' To grant the relief sought by this bill would establish an unfortunate precedent for others of a similar import awaiting consideration, without regard to circumstances or particulars. Moreover, it does not seem right, either in principle or good policy, that the people should be further burdened with the expenses of every litigation in which public officers may be compelled to defend for acts alleged to have been done or omitted to be done in their official capacity; especially where the action is founded upon indictment. A public officer is amenable to the law for his acts, as well as a private citizen, and if he so deports himself as to be subjected to criminal or civil prosecution by inconsiderate or criminal conduct, the responsibility and consequences should rest with him.

If it be determined that the taxpayers shall pay the counsel fees and court expenses in every lawsuit in which a public officer may become involved, much of that restraint which now deters, or prevents the exercise of doubtful or arbitrary authority, or the commission of absolute misconduct, will be so far removed as possibly to impair, in many instances, the integrity and efficiency of the public service.

In the case in question, prosecution was made on indictment, and conviction failed on technicalities. The other parties indicted with this claimant were convicted. He escaped on points raised, chiefly technical in their character; but sufficient under rules of law to secure acquittal.

No officer should put himself under suspicion by acts which warrant indictment; and if his conduct be such as to provoke prosecution, the same rule that applies to the private citizen who is compelled to pay his own expenses, should apply also to him. The people suffer enough from the scandal and reproach arising from criminal investigations into the affairs of their public officers, without having to pay the expenses of every accused.''

The bill was not passed over the veto.

April 11. To the Senate:

**Veto of a bill entitled "An act authorizing the superintendent of public works to return certain certificates of deposit."**

'' This bill proposes to authorize and direct the Superintendent of Public Works to return to F. C. Smith a certificate of deposit for $1,000, deposited with the board of Canal Commissioners in 1870, to secure the performance of a contract for certain canal work.

The records of the Canal Department show that F. C. Smith contracted to build a vertical wall of guard lock section at Black Rock, and dredge out the mouth of mill race at Lower Black Rock, to be completed on or before April 1, 1871. One of the conditions of the contract was that the contractor should deposit $1,000, which, in case of failure to perform the contract as agreed, was to be forfeited to the State.

At a meeting the board of Canal Commissioners, December 7, 1871, the following was unanimously adopted:

'*Whereas,* J. Nelson Tubbs, resident engineer of the western division of this State, has certified to this board that F. C. Smith, contractor for the construction of a vertical wall on guard lock section at Black Rock, also for dredging out the mouth of mill race at Lower Black Rock to the mills of Thornton and others, has been repeatedly directed to prosecute said work in such manner as to insure its completion according to the terms and conditions of said contract, and that said Smith has neglected and refused, and does neglect and refuse, to prosecute said work in such manner; therefore,

*Resolved,* That said contract be and the same is hereby declared abandoned in accordance with the provisions thereof in such cases made and provided for therein.'

From the above evidence it appears that the money in question was legally forfeited to the State and should long since have been covered into the treasury. There is no reason apparent to me why it should be refunded, as proposed in this bill.''

The bill was not passed over the veto.

April 12. To the Senate:

**Veto of a bill entitled "An act to incorporate the Grand Legion of Select Knights of the American Order of United Workmen."**

'' The first section of the eighth article of the Constitution provides that ' Corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the Legislature, the objects of the corporation cannot be attained under general laws.' General laws have already been enacted for the incorporation of associations of the character proposed by this bill, which are believed to be adequate for all reasonable purposes. If their provisions are not satisfactory, it is an easy matter to adopt such judicious amendments as may, in the wisdom of the Legislature, be deemed appropriate. The rapid increase in the number of associations of this kind renders it important, in my opinion, for the interests of the people at large, that future organizations should be regulated by general and uniform statutes. The multiplication of such societies, similar in their objects and operations under diverse and varying provisions of law, must lead to confusion and trouble, if not litigation. The granting of special charters encourages increasing demands for similar legislation from interests, whose incorporation, if desirable, has already been anticipated by general statutes."

The bill was not passed over the veto.

April 22. To the Assembly: Transmitting the annual report of the comptroller and the executive committee of the Board of Trustees of the Sailors' Snug Harbor.

April 22. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *April* 22, 1881.

"A special report of the State Board of Health, with reference to certain nuisances existing in the vicinity of New York and Brooklyn, which seriously affect the comfort and health of the residents of those cities, is herewith respectfully transmitted for the consideration of the Legislature.

It is a notorious fact that particular kinds of business, including the refining of petroleum, the utilization of animal offal, the manufacture of fertilizers and cream tartar, and the storage of manures all conducted on a large scale in and near the metropolis, have been very offensive from the emanation of noxious vapors and stenches, which are denounced by the medical profession as the cause of many kinds of disease.

The recent investigations of a special committee of the State Board of Health warrant the belief that many of the offending causes may be easily removed; at least rendered much less nauseous and hurtful than heretofore.

This subject, involving as it does the health and well-being of nearly two millions of people, is worthy of your serious attention, to the end that all necessary legislation may be secured to avert the danger now imminent.

ALONZO B. CORNELL."

May 2. To the Senate:

**Veto of a bill entitled "An act to convey and release the right, title, property and interest of the people of the State of New York, of, in and to a certain lot of land, with the buildings thereon, and the appurtenances, situated on the northwest corner of Avenue A and 10th Street in the 17th ward of the city of New York, to Auguste Louise Hohenholz, of the city of New York."**

"This bill is not accompanied by any evidence of the propriety of its enactment. It is proposed to release the interest of the people of the State in a property of considerable value in the city of New York, and although effort has been made to obtain the papers on which the proposed release is based, they have not been forthcoming. It is therefore impossible for me to act with satisfactory understanding as to the merits of the bill. Deeming it improper to allow such a bill to become a law without reasonable proof of its fitness, nothing remains but to return it without my approval."

The bill was not passed over the veto.

May 2. To the Assembly:

**Veto of a bill entitled "An act to release the right, title and interest of the people of the State of New York in and to certain lands in Yates county, to Elbert Ball Porter and Eugene D. Porter, heirs at law of Laura Ball Hoenig."**

" The papers accompanying the bill show that the premises described were owned by John F. Hoenig, an alien, who died on Staten Island, in 1877, without heirs; that he was married in 1859 to Laura Ball, who died in 1869. This bill proposes to release the interest of the people of the State of New York acquired by the death of Hoenig, to the two sons of the deceased wife's sister, who have no legal right of inheritance in the property whatever. It is claimed, however, in their behalf, that the property in question was conveyed by Hoenig, to his wife before her death; but sufficient evidence of such conveyance is not furnished. It appears, therefore, that the parties named have not even an equitable claim for the release sought, which, in view of the facts stated, should not be granted."

The bill was not passed over the veto.

May 2. To the Assembly:

**Veto of a bill entitled "An act to establish the compensation of the county judge and surrogate of Seneca county, pursuant to the fifteenth section of the amended sixth article of the Constitution."**

" This bill proposes to increase the salary of the county judge and surrogate of Seneca county from $1,000 to $1,500 per annum, and is in positive conflict with two separate articles of the Constitution. Section 18 of the third article provides that ' the Legislature shall not pass a local or private bill * * * creating, increasing or decreasing fees, percentage or allowances of public officers during the term for which said officers are elected or appointed.' Section 24 of the same article further declares that 'the Legislature shall not, nor shall the common council of any city nor any board of supervisors grant any extra compensation to any public officer, servant, agent or contractor.'

These two constitutional safeguards were adopted by the people in 1874, and were intended to prohibit improvident and unstable action of the Legislature in relation to the compensation of public officers. Whatever circumstances may justify changes in the rate of official salaries these must be made to take effect from the expiration of the pending term of service."*

The bill was not passed over the veto.

May 2. To the Assembly:

**Veto of a bill entitled "An act to release the right, title and interest of the people of the State of New York in and to certain real estate in the town of New Rochelle in the county of Westchester, and state of New York to Martha Harvey."**

"The petition on which this bill is based is deemed insufficient to warrant the release of the interest of the people of the State of New York in the property described. The facts set forth show that the proposed beneficiary is entitled now to a life estate in the property, but whether or not she should receive a further and absolute title depends on circumstances not made known in the papers. The release should not, therefore, be granted without full consideration of all facts in the case."

The bill was not passed over the veto.

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* The term "allowances" does not include a fixed salary. Mangam v. Brooklyn (1885), 98 N. Y. 585. Extra compensation is compensation additional to that fixed by law when the services were rendered. Mahon v. Board of Education (1902), 171 N. Y. 263.

May 9. To the Assembly:

**Veto of a bill entitled "An act to provide for the construction and maintenance of an additional public bath in the city of New York."**[13]

"This bill proposes to establish a public floating bath, to be located on the Hudson river, between 125th and 135th streets in the city of New York, at a present expenditure of $12,000. However desirable it may be to provide some suitable convenience for free bathing in the locality indicated, the amount named is altogether beyond reason. The population residing within the area to be accommodated at this point is not sufficient to justify it. These structures in the city of New York, temporary in their character and use, have heretofore been built in too costly a manner, and their maintenance has been alike extravagant. This bill not only provides an amount excessive for the purpose designed, but it creates an additional source of wasteful expenditure."

May 9. To the Assembly:

**Veto of a bill entitled "An act to amend chapter 148 of the laws of 1855, entitled 'An act to authorize the election of local officers to discharge the duties of county judge and surrogate in the county of Washington, and to do chamber business.'"**

"The purpose of this bill is to vest the special county judge and the special surrogate of Washington county with all of the powers and authority of a justice of the supreme court at chambers, or out of court, in all civil and criminal proceedings; provided the officers named shall have attained the degree of counsellor-at-law.

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[13] The New York public bath bill was not passed over the veto, but another bill was passed and became a law, chapter 447, on the 3d of June, which provided for the construction of a free floating bath at an expense not exceeding the cost of one of the existing free baths.

The jurisdiction of a justice of the supreme court at chambers embraces some of the most important of the functions of that office, frequently involving *ex parte* disposition of matters of serious importance. It often happens that interests of greater magnitude are to be considered at chambers than in court. Such authority should therefore only be lodged in safe and prudent hands. The officers whom it is proposed to clothe with these extraordinary powers are chosen as the alternatives of county judges and surrogates, in whose stead they act in case of disability or vacancy. It is seldom that persons are selected for these offices who have such standing at the bar or experience in their profession as would enable them to compete successfully for the position of justice of the supreme court. It does not seem reasonable, therefore, that the Legislature should confer upon this class of judicial officers prerogatives of such grave importance. In the case of the special surrogate, this bill is particularly objectionable, in that it proposes to confer upon that officer powers which the surrogate himself does not possess."

The bill was not passed over the veto.

May 9. To the Assembly:

**Veto of a bill entitled "An act regulating the proof of the claim of Thomas Cottman."**

"The object of this bill appears to be to deprive the city of New York of its defense in a suit now pending. It would not be considered right or proper to enact a law to take from a private suitor a material point of defense; and it does not seem just either that such discrimination should be made against a municipal corporation. A party who seeks remedy by suit at law should be willing to leave the determination of his case to the courts, and not seek legislative interposition in his behalf. If it shall become a precedent for the Legislature to interfere between litigants there will, sooner or later, be little opportunity left for the consideration of legitimate business by legislation. The demands for special enactments for the relief of suitors will be likely to monopolize the entire session to the exclusion of everything else.''

The bill was not passed over the veto.

May 16. To the Assembly:

**Veto of a bill entitled "An act to facilitate the removal of stable manure from the built-up portions of the city of New York."**

'' By the provisions of the bill the board of health of the city of New York is authorized and directed to designate and set apart on the east and west sides of the city one or more places north of Forty-second street, for the temporary deposit of stable manure, until it can be removed from the city at the least possible cost to citizens. The board of health already has abundant authority to do what the bill proposes, and which it has always refused to do, in the interest of the public health. The members of the board of health vigorously protest against the enactment of a measure of this kind, declaring that horse manure stored in any considerable quantity in the warm months gives rise to the most intolerable stenches, and makes the locality extremely unhealthy, endangering the lives of children particularly. Complaints are continually being made of foul odors and nuisances in and around the city of New York, and it would seem to be especially inappropriate to establish two or more nuisances in the city by legislative enactment, as would be inevitable under the operations of this bill if it became a law.''

The bill was not passed over the veto.

May 16. To the Assembly:

**Veto of a bill entitled "An act authorizing the removal of a bridge over the Champlain Canal, at the city of Cohoes."**

"The bridge which this bill authorizes to be removed is a farm bridge, established and maintained for the accommodation of premises severed by the construction of the Champlain canal. Private parties, now accommodated by its use, object to the proposed removal, as it would deprive them of the facilities for crossing the canal, to which they claim to be entitled. Another objection to the bill is that the removal of the bridge to the locality contemplated will change it from a farm bridge to a city street bridge, over which there will be considerable traffic, and its future maintenance will be thus rendered far more expensive to the State than where now located. The necessity for a bridge at the proposed location is caused by the present and prospective development of Cohoes, for which that city, and not the State, should provide additional facilities."

The bill was not passed over the veto.

May 16. To the Assembly:

**Veto of a bill entitled "An act to exempt the counties of Chemung and Greene from the provisions and operations of chapter 180 of the Laws of 1875, entitled 'An act creating a board of town auditors in the several towns in this State,' and to prescribe their powers and duties."**

"The legislation in reference to town auditors affords an apt illustration of the facility with which the session laws are filled with unimportant enactments. The office of town auditor was created by chapter 180 of the Laws of 1875. That law was amended once in 1877, twice in 1878, and three times in 1879, and in 1880 no less than four different amendments of the law were enacted. These several amendments have exempted thirty-seven counties from the operations of the law, and two bills, now awaiting executive action, make exemptions in five other counties, thus leaving but eighteen counties subject to the law.

It is manifest from this continual demand for exemption, that the creation of the office of town auditor has not accomplished beneficial results; and, judging the future by the past, it may be predicted that county after county will be exempted by special acts until the original statute is practically disposed of. It is, therefore, respectfully submitted that the Legislature should at once consider the propriety of repealing the law of 1875, and thus avoid the necessity of further trifling with this subject."

The bill was not passed over the veto.

May 16. To the Assembly: Transmitting the resignations of Roscoe Conkling and Thomas C. Platt as United States Senators from New York, accompanied by the following joint letter:[14]

WASHINGTON, D. C., *May* 14, 1881.

SIR.— Transmitting, as we do, our resignations, respectively, of the great trusts with which New York has honored us, it is fit that we acquaint you, and through you the Legislature and People of the State, with the reasons which, in our judgment, make such a step respectful and necessary.

Some weeks ago, the President sent to the Senate, in a group, the nominations of several persons for public offices already filled.

One of these offices is the collectorship of the port of New York, now held by General Merritt; another is the consul-generalship at London, now held by General Badeau; another is chargé d'affairs to Denmark, held by Mr. Cramer; another is the mission to Switzerland, held by Mr. Fish, a son of the former distinguished Secretary of State. Mr. Fish had, in deference to an ancient practice, placed his position at the disposal of the new administration, but, like the other persons named, he was ready to remain at his post if permitted to do so.

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[14] Elbridge G. Lapham was elected Senator in the place of Roscoe Conkling, and Warner Miller in the place of Thomas C. Platt.

All of these officers, save only Mr. Cramer, are citizens of New York.

It was proposed to displace them all, not for any alleged fault, or for any alleged need or advantage of the public service, but in order to give the great office of collector of the port of New York to Mr. William H. Robertson as a 'reward' for certain acts of his, said to have 'aided in making the nomination of General Garfield possible.'

The chain of removals thus proposed was broken by General Badeau's promptly declining to accept the new place to which he was to be sent.

These nominations summoned every member of the Senate to say whether he 'advised' such a transaction.

The movement was more than a surprise. We had been told, only a few hours before, that no removals in the New York offices were soon to be made or even considered, and had been requested to withhold the papers and suggestions bearing on the subject, which had been sent to us for presentation, should occasion arise, until we had notice from the President of his readiness to receive them.

Learning that the Vice-President was equally surprised and had been equally misled, we went to Mr. James, the cabinet officer from our State, and learned, that though he had spent some time with the President on the morning of the day the nominations were sent in, no disclosure of an intention to send them had been made to him, and that he first knew of the matter by hearsay following the event.

After earnest reflection and consultation we believed the proceeding unwise and wrong, whether considered wholly in relation to the preservation and integrity of the public service and the public example to be set, or in relation also to the integrity of the Republican party.

No public utterance of comment or censure was made by either of us, in the Senate or elsewhere; on the contrary, we thought that the President would reconsider action so sudden and hasty, and would at least adopt less hurtful and objectionable modes of requiting personal or individual service.

In this hope, the following paper was prepared and signed and presented by Mr. James to the President, who was subsequently informed that you had authorized your name to be added also.

'To the President:

We beg leave to remonstrate against the change in the collectorship at New York, by the removal of Mr. Merritt and the appointment of Mr. Robertson. The proposal was wholly a surprise. We heard of it only when the several nominations involved in the plan were announced in the Senate. We had only two days before this been informed from you that a change in the customs' offices at New York was not contemplated, and quite ignorant of a purpose to take any action now, we had no opportunity, until after the nominations, to make the suggestions we now present.

We do not believe that the interests of the public service will be promoted by removing the present collector and putting Mr. Robertson in his stead. Our opinion is quite the reverse, and we believe no political advantage can be gained for either the Republican party or its principles. Believing that no individual has claims or obligations which should be liquidated in such a mode, we earnestly and respectfully ask that the nomination of Mr. Robertson be withdrawn.

(Signed) CHESTER A. ARTHUR,
T. C. PLATT,
THOMAS L. JAMES,
ROSCOE CONKLING.'

This paper was presented to the President by Mr. James, on Monday, the 28th day of March. Knowing the frequency with which every one of the twenty Presidents of the Republic, and markedly the present incumbent, had withdrawn nominations on less serious representations, we did not apprehend that such a suggestion would be treated as an intrusion, or an invasion of any prerogative of the nominating power.

We were disappointed. Immediately the public press, especially in articles and dispatches written by those in close and constant association with the President and with an influential member of his cabinet, teemed with violent denunciations of the Senators from New York for 'opposing the administration' and 'dictating' to the President. Persons who visited the Executive Mansion reported the President as resentful, and impatient of hesitation to 'advise and consent' to what he proposed. We had made — we have made no assault upon anybody. We have at all times refused to answer questions by representatives of the press, or to make complaint or comment or even denial of the many truthless charges published against us by the officious champions of 'the Administration.' Indeed, beyond confidential consultations with brother Senators and officials, we have said nothing until now on the subject.

Nor have we or either of us 'promoted the deadlock in the Senate' in order to prevent or influence action on any nomination, nor have we ever so stated.

Immediately after the nominations were published, letters and telegrams in great numbers came from every part of the State from its leading citizens, protesting against the proposed changes and condemning them on many grounds. Several thousands of the leading mercantile firms of New York — constituting, we are informed, a majority of every branch of trade — sent us remonstrances.

Sixty of the eighty-one Republican members of the Assembly, by letter or memorial, made objection. Representatives in Congress, State officials, business men, professional men, commercial, industrial and political organizations are among the remonstrants, and they speak from every section of the State.

Besides the nominations already referred to, there were awaiting the action of the Senate several citizens of New York, named for offices connected with the courts, district attorneys and marshals. These were all reappointments. Most of them had been originally commissioned by Mr. Hayes. They were certified by the judges of the courts and many other eminent persons who attested the faithfulness and merit of their service, and recommended their continuance. They were not presented by us. We have not attempted to 'dictate,' nor have we asked the nomination of one person to any office in the State. Indeed, with the sole exception of the written request set forth above, we have never even expressed an opinion to the President in any case, unless questioned in regard to it.

Some days ago the President abruptly withdrew, in one and the same act, the names of General Woodford and Mr. Tenney, and of the two marshals.

This unprecedented proceeding, whether permissible by law or not, was gravely significant. The President had nominated these officers after they had been weighed in the balance. Their official records were before him and had been fully scrutinized and approved. It must be presumed he thought the nominations fit to be made, and that it was his duty to make them. There is no allegation that he discovered unfitness in them afterward. It could hardly be that he had discovered unfitness in all of them alike. What, then, was the meaning and purpose of this peremptory step? It was immediately stated, as if by authority, and seems to be admitted, that the purpose was to coerce the Senate or Senators to vote as they would not vote if left free from executive interference. The design was to control the action of the Senators touching matters committed by the Constitution to the Senate, and to the Senate exclusively.[g] It has been suggested, in addition, that by recalling these nominations and holding them in his own hands, the President might, in the event of the failure of another nomination, use them to compensate that failure. If it can be supposed that all these public trusts are to be, or would in any event be, made personal perquisites, to be handled and disposed of, not only to punish independence of Senatorial votes and action, but to liquidate the personal obligations of any individual, however high in station, the conditions are utterly vicious and degrading, and their acceptance would compel the representatives of States to fling down their oath and representative duty at the footstool of executive power.

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[g] U. S. Const., art. 2, § 2, clause 2.

Following this sweeping and startling executive act, came ominous avowals that dissent or failure to ' advise and consent,' would be held an act of offense, exposing all Senators, from whatever State, to executive displeasure.

Thus we find ourselves confronted by the question whether we shall surrender the plain right and the sworn duty of Senators, by consenting to what we believe to be vicious and hurtful, or to be assigned the position of disloyalty to an administration which we helped to bring in, and the success of which we earnestly wish, for every reason and motive which can enter into the case.

We know no theory avowed by any party which requires such submission as is now exacted. Although party service may be fairly considered in making selections of public officers, it can hardly be maintained that the Senate is bound to remove without cause incumbents merely to make places for those whom any individual, even the President or a member of his cabinet, wishes to repay for being recreant to others or serviceable to him.

Only about two years ago the Senate advised that General Merritt be appointed collector at New York. It is understood that among the Senators who so advised was Mr. Windom, now Secretary of the Treasury, and head of the department whose subordinate General Merritt is. Another Senator, known to have given this advice, was Mr. Kirkwood, now Secretary of the Interior. It is said that, like the Postmaster General, from our own State, these cabinet officers were not taken into consultation touching the removal of General Merritt; but their sworn and official action as Senators is none the less instructive.

That the late Secretary of the Treasury and the late administration, up to its expiration, less than ten weeks ago, approved General Merritt as an officer is well known, and it is nowhere suggested that any citizen had petitioned for his removal, or that official delinquency on his part is the reason for it.

In the place of an experienced officer in the midst of his term fixed by law, it is proposed suddenly to put a man in who has had no training for the position, and who cannot be said to have any special fitness for its official duties.

In the inaugural of President Garfield, delivered on the 4th of March, stand these words:

'The civil service can never be placed on a satisfactory basis until it is regulated by law. For the good of the service itself, for the protection of those who are intrusted with the appointing power against the waste of time and obstruction to the public business caused by the inordinate pressure for place, and for the protection of incumbents against intrigue and wrong, I shall, at the proper time, ask Congress to fix the tenure of the minor offices of the several executive departments, and prescribe the grounds upon which removal shall be made during the terms for which incumbents have been appointed.'

How good the distinction is which would make *major* offices a prey to 'intrigue and wrong' and shield 'minor offices' from like havoc, and whether the collectorships of the country should belong to the exposed or to the protected class, need not be decided here.

Assuming General Merritt to be an officer of average fitness and honesty, it might be reasonably argued that all Senators should with alacrity advise his displacement by a man of obvious superiority. Possibly it might be said that all should advise the selection in Gen. Merritt's place of a man who, without superior fitness, had rendered his country, or even his party, conspicuous and exalted service.

The case in hand does not belong to either of these classes.

The vocation of Mr. Robertson and his legislative and professional experience and surroundings do not denote superiority in the qualities, the knowledge, business habits and familiarity with the revenue laws and system of the United States which might make him more competent than General Merritt to collect the vast revenues and administer the vast business pertaining to the Port of New York. Certainly he cannot in this respect be held an exception to rules of right and consistency on which the Constitution and laws have placed the public service.

We know of no personal or political service rendered by Mr. Robertson so transcendent that the collectorship of New York should be taken in the midst of a term and given to him as recompense.

Mr. Robertson is reported by the New York *Tribune* to have declared that his nomination was a 'reward'—a 'reward' for action as a delegate to the National Convention.

If Mr. Robertson in his action was influenced by a sense of duty, if he voted and acted his honest convictions, it is difficult to see what claim he has for any reward, not to speak of such great reward.

The action, of which an estimate is thus invited, is understood to be this:

Mr. Robertson and sixty-nine other men accepted from a State Convention a certain trust. They sought and accepted the position of agents or delegates to a National Convention. The State Convention declared a plainly stated judgment and policy to be observed and supported by those it commissioned. To this declaration all selected as delegates gave implied consent.

But several of them, in addition, made most specific personal pledges and engagements to exert themselves in good faith throughout, to secure the nomination of General Grant. They made this pledge as the means of obtaining their own appointment as delegates, and they did, as we both personally know, obtain their seats in the National Convention upon the faith of their personal statements of their earnestness and fidelity.

The obligations thus assumed, we understood to involve integrity as much as the obligation of one who receives the proxy of a stockholder in a corporation upon the pledge and promise to vote as his principal would vote.

Whether Mr. Robertson was or was not himself bound not only by honor and implication, but by expressly giving his word, becomes quite immaterial in view of the claim made for him.

It is insisted that he ' organized the bolt,' or, as it has been sometimes stated, ' he was the leader of the bolt.' This is to say that he invited, persuaded, induced others whom he knew had given their word, and had obtained their seats by doing so, to violate their word and betray not only Republicans assembled in State Convention, but the Republicans of their districts as well, who had trusted in their honor.

Whoever counsels and procures another to do a dishonest or dishonorable act must share with that other the guilt, and should share also the odium justly attaching to it.

We are, therefore, wholly unable, upon whatever ground we put it, to see justification for ourselves should we become parties to using the public trusts which belong to the people to requite such services in such modes.

But the appliances employed to effect results set up new standards of responsibility and invade, as we believe, the truths and principles on which the separate and co-ordinate branches of the government stand.

A Senator has his own responsibility. He is amenable to his State and to the body of which he is a member. He is bound by his oath to 'advise and consent' on his conscience and judgment before God.

Whatever or whoever else may constrain him, he is to be exempt from executive menace or disfavor on the one hand, and executive inducement on the other. Long standing on the orders of the House of Commons has been a declaration that a member shall suffer expulsion who even reports the wishes of the executive head of the government to influence the votes of members.

The British Constitution is not more jealous than ours in this regard.

To give advice, and honest, independent advice as to an appointment proposed, is as much the right and duty of a Senator as it is the right or duty of the President to propose the name. Be his advice one way or the other, it is no more an act of disrespect or treason to the nominating power than the verdict of a juror or the decision of a judge.

The idea that the Senate is simply to find out what is wanted and then to do it, we cannot believe safe or admissible, and thus far no party has dared or descended to set up such a test of party fidelity or allegiance.

In this instance such prominence has been given to the subject, and such distrust has been expressed of the correctness of our positions, that we think it right and dutiful to submit the matter to the power to which alone we are bound and ever ready to bow.

The Legislature is in session, it is Republican in majority, and New York abounds in sons quite as able as we to bear her message and commission in the Senate of the United States.

With a profound sense of the obligation we owe, with devotion to the Republican party and its creed of liberty and right, with reverend attachment to the great State whose interests and honor are dear to us, we hold it respectful and becoming to make room for those who may correct all errors we have made, and interpret aright all duties we have misconceived.

We therefore inclose our resignations, but hold fast the privilege, as citizens and Republicans, to stand for the constitutional rights of all men and of all representatives, whether of the States, the Nation, or the People.

We have the honor to be, very respectfully,

Your obedient servants,

ROSCOE CONKLING,
THOMAS C. PLATT.

To His Excellency, Gov. CORNELL.

May 17. To the Senate:

**Veto of a bill entitled "An act in relation to the Ulster and Delaware Plank Road Company."[15]**

"Particular cases are enumerated in the Constitution for which the Legislature shall not pass private or local bills.[h] Section 1, article 8, provides that 'corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the Legislature, the objects of the corporation cannot be attained under general laws.' It is plain that the object of this section is to secure greater uniformity and permanence in the exercise of corporate powers, as well as to prevent the mischievous effects of special and local legislation.

The bill under consideration seems to come clearly within the prohibition cited. A general law regulating the formation and management of plankroad companies is now in force, and contains ample provisions for the objects sought to be accomplished by this bill, in a manner protective of all interests involved. The board of supervisors possessed authority to give consent, by the proper vote, to the extension of the corporate existence of the company named; hence to legalize its acts, assuming that these were done in pursuance of law, is wholly unnecessary. If, however, the board of supervisors did not proceed in conformity with law, then it is more than doubtful whether the Legislature has the right now to legalize acts which it cannot itself perform. The statutes provide, furthermore, that in addition to other conditions precedent, the consent of a majority of the stockholders of plankroad companies must first be obtained before their charters can be extended. This is manifestly a judicious requirement; but it does not appear that such consent in this case has been secured. As a matter of good policy, therefore, the arbitrary renewal of the charter should not be permitted by special enactment.

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[15] See post, p. 667 for note on the veto of ten-day bills, including a consideration of the question whether this bill and the next were returned in time to make the vetoes effective.

[h] Const. 1846, art. 3, § 18, added 1874.

The second section of the bill is especially objectionable. It is made lawful by the terms of the bill for the Ulster and Delaware Plankroad Company, its charter having been extended, to build a new or branch road; and it marks out the general direction or route of the same. The general law already gives to companies organized under it sufficient authority to extend their roads, or construct branches; consequently, to allow this company by special act to do that which is already permitted, is not only superfluous legislation, but it is clearly repugnant to the Constitution. If, on the other hand, the Ulster and Delaware Plankroad Company, organized under the general law, had no right under its charter to build extensions or construct branch roads, then in that case also the Legislature would have no power to grant this corporation any special privilege or new right.''

For the subsequent history of this bill, see *post,* pp. 667–676.

May 17. To the Senate:

**Veto of a bill entitled "An act to change the corporate title of the Bankers' Life Insurance and Trust Company of New York, to the Bankers' Loan and Trust Company of New York."** [See note 15.]

"The Bankers' Life Insurance and Trust Company of New York was incorporated by special charter, chapter 687 of the Laws of 1870, with the powers of a life insurance company and trust company, providing that its capital stock should be subscribed and twenty-five per cent thereof paid in within twelve months. By chapter 871 of the Laws of 1871, the time for the subscription and payment of the capital stock was extended one year; and chapter 459 of the Laws of 1872 extended the time for the subscription and payment of the capital stock one year more; chapter 685 of the Laws of 1873 repealed so much of the charter as conferred upon the corporation the powers of an insurance company, leaving it simply a trust company, and allowing a further extension of one year within which its capital stock should be subscribed and paid in.

The bill herewith transmitted describes the corporation as having been duly organized on the 23d day of April, 1874, but the Banking Department, to which it was required to report, has no knowledge of such an institution. Diligent inquiry among bankers, trust companies and commercial agencies in New York has afforded no information as to the existence or operations of the company. It would seem that a corporation which has been so prolific of legislation should not be permitted to occupy an additional space in the statutes of the State, at least until it shall have made for itself a local habitation and a name by which it can, upon inquiry, be found. The failure to report to the Banking Department, as required by its charter, is another reason why the change of name should not be assented to at this time."

For the subsequent history of this bill, see *post,* pp. 667-676.

May 17. To the Assembly:

**Veto of a bill entitled "An act concerning the pilots of the channel of the East River, commonly called Hell Gate."**[16]

"While it is desirable that some reasonable modification of the law regulating Hell Gate pilotage should be made, the present bill does not appear to be a satisfactory solution of the question. It makes a radical change in the system of pilotage, by which the pilots, who have spent many long years in qualifying themselves for this peculiar service, will be suddenly thrown out of employment. Many of the most competent of them have already reached an age when it will be extremely difficult for them to engage in other business. If this change were made for the relief of commerce, the hardship to the pilots might perhaps be justified. Unfortunately, however, the terms of the bill seem to give the benefit of the change to the tug boats. A measure which shall relieve commerce of all unjust and unnecessary burdens will meet with prompt approval; but simply to transfer the present tax on commerce from the pilots to the tug boats is deemed unwise."

May 19. To the Legislature:

"EXECUTIVE CHAMBER,
ALBANY, *May* 19, 1881.

"The Legislature is hereby respectfully notified that the two Senatorial offices by which the State of New York is entitled to representation in the Congress of the United States, are now vacant by the resignation of the late incumbents. [See note 14.]

ALONZO B. CORNELL."

For the resignations of Conkling and Platt, see special message of May 16, *ante*, p. 555.

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[16] The Hell Gate pilot bill was not passed over the veto, but another bill was passed, and became a law, chapter 493, on the 13th of June. [See 1880, note 16, *ante*, p. 441.

May 23. To the Assembly:

**Veto of a bill entitled "An act to legalize the acts of the electors of the town of Canandaigua, and to provide for carrying the same into effect."**

" The electors of the town of Canandaigua, at the regular town meeting in March last, adopted a resolution to raise by tax the sum of $1,008, for the purpose of reimbursing William Judevine for the loss of live stock destroyed by poison in July, 1880. It appears that Judevine was an excise commissioner, and it is supposed that his cattle were poisoned because he refused to grant licenses. No direct evidence has been obtained as to this allegation; nevertheless, it seems to be based on well-grounded suspicion. If this were an established fact, however, it would not create a liability of the town sufficient to justify reimbursement. In any view it could only be regarded as a misfortune, and the proposed compensation must, therefore, be considered as a public gratuity. Section 11 of the eighth article of the Constitution declares that no county, city, town or village shall hereafter give any money or property, or loan its money or credit, to or in aid of any individual, association or corporation; hence, it is not competent for the town of Canandaigua to make such disposition of its funds as proposed, and the Legislature possesses no power to authorize a town to do what the Constitution prohibits."

The bill was not passed over the veto.

May 25. To the Assembly:

**Veto of a bill entitled "An act to amend chapter 365 of the Laws of 1875, entitled 'An act to extend the operation and effect of the act passed February 17, 1848, entitled an act to authorize the formation of corporations for manufacturing, mining, mechanical and chemical purposes.'"**

" This is a proposition to authorize any 'corporation heretofore organized under this act owning, or hereafter constructing and owning a floating dock to use and operate the same, and to locate, moor or anchor such floating dock in or upon any of the waters of the State opposite to and in front of any public land, place or places not otherwise used or occupied for shipping or business purposes, and connecting the said floating dock with said land, place or places by a suitable passageway or gangway for the safe passage of persons to and from said dock.' The ostensible object of the bill is to provide an economical and convenient mode of landing passengers on the beaches of Long Island, now very extensively patronized for summer excursions. Unfortunately, however, the authority is so broad as to admit of the mooring of a floating dock in front of public places in cities, as for instance the Battery in the city of New York. It can hardly be supposed that the Legislature intended to grant such privileges.''

The bill was not passed over the veto.

May 26. To the Assembly: Transmitting a communication from the Commission on Revision and Amendment of the laws relating to assessment and taxation, presenting suggestions looking to future legislation on the subject of taxation.

The Commissioners said they had sought to devise a plan of indirect taxation which would relieve real estate from assessment for state purposes, and that an attempt had also been made to secure a more just and equitable system of taxing personal property. The plan proposed included provisions relative to the taxation of savings banks, the manufacture and sale of liquors, trust mortgage bonds and collateral inheritances, and sales of stocks, securities, cotton, petroleum and other commodities. The commission estimated that $6,000,000 would be annually derived from these forms of indirect taxation. Bills were presented intended to carry the plan into effect.* [See Assembly Document No. 124. See note 1.]

May 30. To the Assembly:

**Veto of a bill entitled "An act to amend chapter 439 of the Laws of 1880, entitled 'An act to amend chapter 415 of the Laws of 1877, entitled an act for the protection of dairymen, and to prevent deception in sales of butter.'"**

"This bill is believed to be unconstitutional for the reason that it attempts to interfere with and impair the right to make, use and vend an article for which letters patent have been issued by the United States. The Constitution gives to Congress the power to promote the progress of science and useful arts by securing for limited times to inventors the exclusive right to their respective discoveries.[1] Chapter 439 of the Laws of 1880, which the accompanying bill proposes to amend, provides that a certain article of commerce when offered for sale shall be stamped 'oleomargarine.' This provision is in accordance with the rights acquired by certain parties from the patent laws of the United States, for under such designation or name the patents issued; and as such it has a known commercial value. This bill proposes that the article shall be stamped 'imitation butter' instead of 'oleomargarine.' It is claimed, and with apparent force, that the stamp of 'imitation butter' would be injurious to the sale of the article thus protected by letters patent. It is obvious, therefore, that the effect of the proposed legislation would be derogatory to the rights granted by laws made pursuant to the express provisions of the Constitution of the United States, and it is, therefore, wholly indefensible."

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* An act passed in 1901, chapter 117, imposed a tax on the surplus undivided earnings of savings banks.

A tax on the sale of liquors was imposed by the liquor tax law of 1896, chapter 112.

A tax on gifts, legacies and collateral inheritances was imposed by the act of 1885, chapter 483. This subject was afterwards included in the Tax Law, L. 1896, chapter 908.

A tax on the surplus and undivided profits of trust companies was imposed by the act of 1901, chapter 132.

An act passed in 1905, chapter 729, imposed a tax on real estate mortgages, but this act was amended by the act of 1906, chapter 532, which imposed a recording tax on mortgages. For further amendments, see L. 1907, chap. 340.

A stock transfer tax was imposed by the act of 1905, chapter 241.

[1] U. S. Const. art. 1, § 8, clause 8.

The bill was not passed over the veto.

May 30. To the Assembly:

**Veto of a bill entitled "An act to provide for the grading of a certain portion of Lorraine street in the city of Brooklyn."**

"The bill proposes to authorize and direct the department of city works immediately to grade Lorraine street from Court to Dwight street without reference to the interests or desires of the owners of property fronting upon the streets. Representations on behalf of a majority of such owners have been made to me in opposition to the provisions of the bill, and it seems therefore proper to leave the subject to the disposition of the local government in accordance with existing laws in reference to street improvements. The circumstances in this case seem to make the requirements of this bill a peculiar hardship upon the owners of property fronting upon the street proposed to be improved, and no good reason has been offered to justify the enactment of the measure."

The bill was not passed over the veto.

May 30. To the Assembly:

**Veto of a bill entitled "An act to regulate the manufacture and sale of vinegar, and to prevent the adulteration of the same."**

"The object sought to be attained by this bill is already abundantly provided for by the terms of chapter 407 of the Laws of 1881, entitled 'An act to prevent the adulteration of food or drugs,' which act may be readily referred to as Senate Bill No. 317."

The bill was not passed over the veto.

May 30. To the Assembly:

**Veto of a bill entitled "An act to prevent the false impersonation of policemen and other officers."**

"Laws fully adequate for the purpose of preventing the false impersonation of policemen and other officers are now in force in this State, and the adoption of this measure would simply add to the number of statutes, without in any material degree increasing their efficiency."

The bill was not passed over the veto.

May 31. To the Senate:

**Veto of a bill entitled "An act to prevent the removal of actions to the circuit court of the United States by foreign insurance companies."** [17]

"This bill proposes to prohibit insurance companies of any nature, organized or existing under and by virtue of the laws of any State, Territory, or country whatever, other than by the laws of the State of New York, from transacting any business in this State, unless, on or before the 1st day of January next, they shall agree by a vote of their boards of directors, duly certified and filed in the Insurance Department in Albany, not to remove or petition to have removed, or in any manner procure to have removed to the Circuit Court of the United States, any action or proceeding which shall have been commenced in a court of this State.

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[17] The bill to prohibit the removal of actions by foreign insurance companies was not passed over the veto. See L. 1880, chapter 428, relative to foreign fire and marine insurance companies, which required such companies before receiving a certificate of authority to transact business in this State, to file with the Superintendent of Insurance an agreement not to apply for the removal to the Federal court of any action begun against them in a State court.

Many objections can be urged against a proposition of this character, especially with reference to its application to insurance companies, organized under the laws of other States, either now doing business in this State, or that may hereafter apply for admission. The bill is proscriptive in its object, and calculated, if it becomes a law, to excite retaliatory legislation, to the injury of companies organized under the laws of New York and operating in other States.

The reciprocal relations that now for the most part obtain, and which are desirable to be fostered, would be exposed to disruption; and compulsory submission to like exactions or positive expulsion of home companies from other States would inevitably follow, and thus lead to injurious consequences. Numerous companies incorporated in other States have done business in New York for many years under no such agreement as that now proposed; and few instances are known, if indeed any can be recalled, where wrong has been done by a resort, in litigated cases, to the Federal courts. To subject these corporations now, conditioned on remaining in the State, to a relinquishment of rights hitherto enjoyed, and which in a possible emergency might hereafter be imperiled, seems not only impolitic, but likewise unjust. It is no justification that similar laws exist in any other State. If any now remain, they must eventually give way to more enlightened and liberal views.

But, aside from the foregoing considerations, this bill may be regarded as an attempt, although futile, to divest the United States courts of their established jurisdiction. If it were admitted that a condition precedent to transacting business in this State could be applied in the manner contemplated, it is quite certain, notwithstanding, that the removal of suits to a Federal tribunal could not be prevented, if litigants chose to avail themselves of rights guaranteed by the Constitution of the United States and secured by Congress in pursuance of the Constitution.[1] The attempt, therefore, to impose restrictions or limitations which have been pronounced to be repugnant to the supreme law of the land is at variance with wise and beneficent government. If substantial justice can better be secured to any citizen by appeal to the highest courts of the country, that way should never be closed by legislative enactment, threatening loss to private interest. A corporation is a citizen of the State by which it is created, and can, therefore, sue and be sued in the Federal courts. No one would think of attempting to prevent a natural citizen from carrying his cause to the courts of the United States. The denial of that right to any, under whatever pretext, is subversive of equality of government and law."

June 1. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *June* 1, 1881.

"The attention of the Legislature is respectfully but earnestly called to the importance of providing for the prompt abatement of a nuisance emanating from the present condition of the abandoned Chemung canal, and dangerous to the health and lives of people living in the immediate vicinity. The report of the State Board of Health, to whom the complaint of citizens was referred for investigation, is herewith transmitted, from which it will be seen that great suffering is now felt in consequence of the neglect of the State to provide suitable protection against the evils complained of. It is hereby recommended, therefore, that the Superintendent of Public Works be authorized to take the necessary steps to remedy the existing difficulty, and that suitable appropriations be made for that purpose. [See note 2.]

ALONZO B. CORNELL."

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[1] U. S. Const. art. 3, § 2, clause 1.

June 4. To the Senate:

**Veto of the following items in a bill entitled "An act making an appropriation to pay the expenses of the collection of tolls, superintendence, ordinary repairs and maintenance of the canals for the fiscal year commencing on the 1st day of October, 1881, and to provide for a contingent deficiency in the revenues of the canals for the fiscal year ending September 30, 1881, and commencing October 1, 1881."**

" 'For building an iron bridge across the Erie canal at Magnolia street, in the town of Geddes, in the county of Onondaga, to be built by the Superintendent of Public Works, out of the ordinary repair fund of the canals the sum of $10,000, or so much thereof as may be necessary.'

This item is objected to and not approved for the reason that it provides for the building of a bridge over the canal where no bridge has heretofore been located; hence it does not come within the limit of the constitutional authority of the Legislature to provide for 'paying the expenses of collection of tolls, superintendence and ordinary repairs,' of the State canals. The Constitution is specific as to appropriations to be made out of the canal revenues after paying the expenses of collection, superintendence and ordinary repairs,[k] and it is not competent for the Legislature to divert the revenues of the canals to the erection of new bridges or any other work of that character.

'For the construction of a draw in the bridge over the navigable channel of the Oneida river at Brewerton, between the counties of Oswego and Onondaga, the sum of $7,500, payable out of any money in the treasury applicable to the payment of expenses of canals, and so much of the moneys appropriated by chapter 399 of the Laws of 1874 for the Oneida Lake canal remaining unexpended are hereby reappropriated for rebuilding such draw, or so much thereof as may be necessary.'

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[k] Const. 1846, art. 7, § 3, am. 1854, 1874.

This item is objected to and not approved, for the reason that no appropriation was made by the law of 1874 for the Oneida Lake canal, and therefore the appropriation herein proposed would have to be paid out of the canal revenues, which should not be taxed for the object named.

'For the construction of an iron bridge over the Champlain canal in the town of Fort Ann, in place of the present wooden structure known as Dewey's bridge, the sum of $5,000, payable out of any moneys in the treasury applicable to the payment of canal expenses.'

This item is objected to and not approved, for the reason that the Superintendent of Public Works is already authorized to provide for any repair or renewal of existing bridges, and no legislation is necessary for the purpose. A special appropriation can confer no further power upon him in the matter than is now possessed by him.

'For the construction of a bridge over the Erie canal in Tonawanda, New York, at a point where Delaware street in Erie county and Main street in Niagara county intersect the canal, the sum of $10,000, payable out of any money in the treasury applicable to the payment of canal expenses.'

This item is objected to and not approved, for the reasons first above stated. If circumstances are such as to make it proper for the State to provide for a bridge over the canal at a point where none has existed heretofore, the appropriation must of necessity be made from the general fund instead of the canal revenues.

'For building an iron bridge across the Erie canal at Prospect street, in Medina, Orleans county, to be built by the Superintendent of Public Works, $10,000, or so much thereof as may be necessary, payable out of any money in the treasury applicable to the payment of canal expenses.'

This item is objected to and not approved, for the reasons first above stated. The constitutional restrictions as to the appropriation of canal revenues render the Legislature incompetent to provide for new improvements along the line of the canals."

The items were not passed over the veto, and the bill became chapter 449.

June 4. To the Assembly:

**Veto of a bill entitled "An act to provide for the building of an iron or suspension bridge across the Chemung river in the town of Big Flats, County of Chemung, and bonding said town and the town of Southport and the city of Elmira to pay for the construction thereof, and to charge said towns and city with the maintenance thereof."**

"The Constitution, as amended in 1874, provides that the Legislature shall not pass a private or local bill in any of the several cases enumerated and among others 'providing for building bridges.'[1] The measure under consideration can only be regarded as a local bill, its object being to provide for the building of a bridge over the Chemung river in the town of Big Flats at a point designated. It seems clear, therefore, that the bill is in direct and irreconcilable antagonism with the foregoing Constitutional prohibition."

The bill was not passed over the veto.

June 6. To the Senate:

**Veto of a bill entitled "An act to authorize the erection of a building to be used as a refreshment house at Mount St. Vincent in the Central Park of the city of New York, and to provide the necessary means therefor."**

"This is a proposition to increase the public debt of the city of New York, $75,000 to erect a building in Central Park to be rented as a house of refreshment. The indebtedness of the city is already far too great, and should not be enlarged except for some meritorious and necessary object. Indeed, the future welfare of the city would be enhanced by the adoption of some arbitrary measure that would insure a certain positive reduction of the debt each and every year until it be wholly extinguished. This, however, would of necessity be a slow and tedious process under the most favorable circumstances. The demand for increased water supply and other improvements which cannot be postponed will largely impede the best plan that may be devised for reducing the debt; hence no expenditure should be allowed for any purpose not absolutely essential to the welfare and prosperity of the city.

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[1] Const. 1846, art. 3, § 18, added 1874.

A house of refreshment in Central Park cannot in any proper sense be regarded as indispensable. The number of people who frequented the house recently destroyed by fire was really insignificant in comparison with the whole number visiting the park. If rebuilt it would be for the pleasure of the few, and wholly in disregard of the interests of the many.

Private enterprise may safely be relied on to provide ample accommodations for the class of people who patronize such places, and it will be quite as much to the credit of the city that resorts of the character proposed be located outside of the park rather than within it."

The bill was not passed over the veto.

June 6. To the Assembly:

**Veto of a bill entitled "An act to provide for the publication of the registry of voters in the city and county of New York."**[18]

" It is difficult to realize that any practical benefit would be secured by the passage of this measure commensurate with the expenditure necessarily involved. The publication of two hundred thousand names in one mass would make a cumbersome document which could hardly be expected to secure a general circulation, and without which no material advantage would ensue. If greater publicity of the registry than is now provided be desirable, a better plan would be to publish the list of voters registered, by election districts, and furnish a copy to each elector whose name appeared therein. This would ensure the widest circulation, and be more likely to lead to the detection and exposure of illegal or erroneous registration. Such plan might necessitate a somewhat larger expense than the consolidated publication proposed by the bill, but its manifest advantages would certainly justify the increase, if any were required. A very limited number of persons in each election district take the interest to examine the registry lists. Ample opportunity is already afforded them for all necessary scrutiny, and political committees can easily provide themselves with copies, which they are now generally accustomed to do. General publication would undoubtedly prove a convenience to these organizations, and relieve them from the expense of copying the lists. The same is true in regard to candidates who may desire to address circulars or tickets to voters, but there can be no obligation on the part of the city to incur expense on behalf of these interests.

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[18] The bill was not passed over the veto, but another bill to provide for the publication of the registry of voters in New York was passed, and became a law, chapter 706 on the 22d of August, 1881.

To mass the names of the electors of the entire city in a single publication would furnish great facilities for evil-disposed persons to plan and perpetrate fraudulent voting. With such a list in hand it would be an easy matter to select names for repeaters to go from one district to another personating genuine voters.

It may be claimed that opportunity for such fraud already exists; but it must also be admitted the greater publicity would add largely to the evils which now menace the rights of citizens. The right of suffrage is justly prized as the safeguard of citizenship. Every possible protection of this right should be afforded, and all designs for its abuse should be sacredly guarded against. It is feared, however, that this bill would expose it to new dangers."

June 7. To the Assembly:

**Veto of the following items in the Supply Bill, which became chapter 475:**

"'For deficiency in appropriations for advances by the Comptroller to the clerks of the Senate and Assembly, for contingent expenses $8,500, or so much thereof as may be necessary.'

This item is objected to and not approved, for the reason that the Comptroller is of opinion that the existing appropriation is adequate for all necessary and proper demands upon it.

'For removing a portion of the Senate library from the old to the new Capitol, and the remaining portions thereof from the court of appeals chamber to the new Senate chamber, including the documents and papers on file; for arranging and indexing the same, under the direction of the clerk of the Senate, and for preparing and removing to the executive chamber a portion of the library in the old Capitol, for the use of the Governor, the sum of $1,200, to be paid on the certificate of the clerk of the Senate to the parties entitled thereto; and for removing from the old Capitol the remainder of the books belonging to the Assembly Library, and arranging the same, and for rebinding the books in the Assembly library now in a dilapidated condition, the sum of $1,200, to be paid on the certificate of the clerk of the Assembly, and the work to be done under his direction.'

This item is objected to and not approved, for the reason that it proposes to authorize an expenditure wholly disproportionate to the value of the service provided for or necessary for the purpose.

'For Charles H. Peck, for traveling and other expenses incurred by him in the discharge of his duties as State botanist, $102.53.'

This item is objected to and not approved, for the reason that adequate provision has already been made for the services required, and no obligation rests upon the State to pay expenses connected therewith.

'For the purpose of protecting the public health, the Governor shall appoint a person whose duty it shall be to see that the provisions of chapter 415 of the Laws of 1877, chapter 439 of the Laws of 1880, or any law amendatory thereof, are fully enforced, who shall receive an annual salary of $3,000, to be paid in quarterly installments, and who shall hold his office during the term of the Governor making the appointment, and the sum of $3,000 is hereby appropriated out of any money in the treasury not otherwise appropriated for the payment of said salary.'

This item is objected to and not approved, for the reason that the proposed expenditure is believed to be unnecessary. The State should not be expected to provide a special agent to see to the enforcement of each separate law. The courts have been established and are maintained for the purpose of punishing those who violate the laws, and they are believed to be fully adequate to protect public interests in this regard.

'Of the appropriation for the Attorney General, the item which reads as follows: For the payment of the services, expenses and disbursements of counsel appointed on the retainer of the late Attorney General Fairchild, to defend the late Auditor of the Canal Department in a suit brought against him on the relation of Orrin W. Sage, $1,806.10, or so much thereof as may be necessary; and'

This item is objected to and not approved, for the reason that the amount proposed is regarded as an extravagant and unreasonable allowance for the services and expenses in the case named.

'For deficiency in the appropriations for the stenographers in the second judicial district, appointed under chapter 765 of the Laws of 1868, $500, said amount to be paid only from moneys which shall have been or shall be paid into the treasury for taxes levied for the purposes of said act and in pursuance thereof.'

This item is objected to and not approved, for the reason that the law under which the stenographers were appointed was repealed in 1877, and no good reason is apparent why an appropriation to provide for a deficiency under the operations of that law should be necessary at this late date.

Of the appropriation for the Homoeopathic Asylum for the Insane, at Middletown, the item which reads as follows: 'For grading grounds in rear of the same, for setting out shade trees, constructing roads and walks, and for paving, $3,000.'

This item is objected to and not approved, for the reason that the State should not be taxed for elaborate pleasure grounds in connection with institutions of this character, and for the benefit of neighborhoods. While the embellishments suggested might add to the surroundings, there is no such necessity for them as to justify the expenditure proposed. The State should not be expected to lay out and maintain ornamental parks simply to gratify local pride.

Of the appropriation for the Willard Asylum for the Insane, the item which reads as follows: 'And for the erection of a building for storage, with hall in second story for assembly and recreation of patients, $7,000.'

This item is objected to and not approved, for the reason that it is not deemed an appropriate time for the commencement of new buildings for the use of the insane.

Until the buildings now in progress shall be completed and fitted for use, the people should not be taxed for additional structures.

Of the appropriation for the Buffalo State Asylum for the Insane, the items which read as follows: 'For furnishing the several wards, $9,000; for furnishing the administration building, $1,000; for washing machines, wringer, mangle, shafting, pulleys, hangers, and putting up the same, and fitting up washing and ironing rooms, $2,000;' and 'for bakery, $900.'

These several items are objected to and not approved, for the reason that the objects named were expressly provided for by appropriation in 1879.

'For the Society for the Reformation of Juvenile Delinquents, in the city of New York, for repairs and plumbing and sewerage system in the several departments and grounds of the institution, and for mason work connected therewith, pursuant to the direction of the board of health of the city of New York, $8,000, or so much thereof as may be necessary.'

This item is objected to and not approved, for the reason that the State has already made generous provision for the institution in question, and should not be called upon for further contributions.

'For deficiency in appropriations for the maintenance of convicts sentenced to penitentiaries, $25,000.'

This item is objected to and not approved, for the reason that ample provision has already been made in the regular appropriation bills to discharge all reasonable obligations of the State in respect to penitentiaries. There are now in these institutions hundreds of prisoners who could be provided for in the State prisons without cost to the treasury.

It is not reasonable to expect the State to pay the penitentiaries for the keeping of convicts who can more than earn their own living, especially when the State is obliged to maintain prisons in which those confined would be a source of profit instead of expense.

'For the Seamen's Retreat Hospital on Staten Island, for steam-heating apparatus, $5,000; for reimbursing, in part, the hospital fund, for amounts expended therefrom, for interest, insurance, repairs and completion of buildings during the year 1880, $6,000; for repairs to the cemetery, including iron fence, $1,500; for building a line fence around hospital property, $2,500; for repairs of sewer and its extension below low-water mark, $400, and for repairs and painting of hospital roof, $600.'

These several items are objected to and not approved, for the reason that before a larger investment be made in this property by the State, it is desirable that some definite policy shall be determined upon in reference to the future support and management of the institution. The State contributed $60,000 to extinguish a mortgage on the property, on the representation that no further assistance would be required. Although the mortgage was fully paid last year, the State is now asked to contribute $15,000 for the support of the hospital. No satisfactory reason has been given for this demand, which should not be granted without.

Of the appropriation for the city of Syracuse, the item which reads as follows: 'Of the local assessment and expenses for paving, on Salina street, in said city, in front of the Salt Spring office, in 1876, $382.72, and'

This item is objected to and not approved, for the reason that the State should not be taxed for local assessments of this kind. The city of Syracuse is largely benefited by the use and maintenance of the property in question by the State, and there is no propriety or equity in charging it with a liability for such local improvement.

The item for sewerage is approved, for the reason that the State enjoyed a benefit from the improvement in the increased value of vacant property adjacent thereto.

'For the construction of a retaining wall on the north and east side of the bridge across the canal on James street in the city of Rome, along the southerly line of Whitesboro street, the sum of $5,000, or so much thereof as may be necessary. Said wall to be constructed under the direction of the Superintendent of Public Works, by contract or otherwise, as said superintendent may elect.'

This item is objected to and not approved, for the reason that it is not regarded as a legitimate object of expenditure by the State. If it be necessary at all, the city of Rome should bear the expense.

'For James I. Hart, assistant sergeant-at-arms and postmaster of the Senate, for the expenses of the committee appointed by the clerk of the Senate to attend the funeral of Chauncey O. Abbott, late clerk of the committee on cities of the Senate, $175, or so much thereof as may be necessary, payable on vouchers, to be approved by the clerk of the Senate.'

This item is objected to and not approved, for the reason that the object is not a proper one for public expenditure. The expense incurred was a voluntary one, and had no relation to official duty.

'For the Comptroller, for the payment of work done for the State by order of legislative committees in the discharge of their duties as such committees, or by officers of the government, in excess of the appropriations for such work which the board of audit has certified was done in good faith, and that the charges thereof are reasonable, the sum of $4,368.88.'

This item is objected to and not approved, for the reason that the State is neither legally nor equitably liable for the work claimed to have been done. So long as such irregularities are disregarded, and appropriations are made to meet them, the treasury will be taxed to unjust and unnecessary limits.

'For repairing the roads on the Onondaga Indian reservation, the sum of $1,000, to be expended under the supervision of Z. Lawrence Beebe, of the town of Onondaga, who is hereby appointed a commissioner for that purpose, who shall receive out of such sum three dollars per day for each full day occupied by him in the discharge of such duty, but for not exceeding fifteen days in the aggregate, and who shall execute to the people of this State a bond, to be approved by the Comptroller, for the faithful performance of his duties as such commissioner.'

This item is objected to and not approved, for the reason that the roads in question should be repaired in the manner provided by the general laws relating to highways.

'For the repair and rebuilding of the bridge across the Allegany river at Red House, Cattaraugus County, on the Allegany Indian reservation, $4,000, or so much thereof as may be necessary, to be expended under the supervision of James Frink and Thomas Rosenburg of Red House, and William H. Aldrich of Randolph, in said county, who are hereby appointed commissioners for that purpose, who shall each receive out of said sum three dollars per day for each full day occupied in and about such supervision, but the total compensation of such commissioners shall not exceed the sum of $300. Before entering upon the duties of their office the said commissioners shall execute to the people of this State a bond, to be approved by the Comptroller, for the faithful execution of the duties herein imposed.'

This item is objected to and not approved, for the reason that the bridge named should be repaired or rebuilt by the town or county in which it is located. There is no more reason why it should be kept up by the State than hundreds of other bridges. If this appropriation should be made it would become a precedent on which numerous other demands for local bridges would be presented for consideration.

'For the town of Onondaga, Onondaga county, to reimburse it for money expended in the repair of the bridge over Onondaga creek, on the Onondaga Indian Reservation in the Tully road, $185.71.'

This item is objected to and not approved, for the reason that the bridge in question should properly be maintained by either the town or county of Onondaga. If the town has any right to reimbursement in the premises, it lies against the county and not the State.

'The unexpended balance of the appropriation of $22,800 made in chapter 193 of the Laws of 1876, to refund to contractors the amounts deposited by them in trust with the late treasurer, in pursuance of chapter 850 of the Laws of 1872, and chapter 766 of the Laws of 1873, with such equitable interest as may be due thereon, being the sum of $2,400, is hereby reappropriated for the same purpose, and the further sum of $1,152, or so much thereof as may be necessary, is hereby appropriated to pay such interest on such deposits as may be equitable.'

This item is objected to and not approved, for the reason that the Canal Board in 1876 refused to recognize the claims for refunding the moneys in question, and nothing has occurred since to impeach the wisdom of that conclusion.

Of the appropriation for the commissioners of quarantine the items which read: 'For repairs of rip-rap wall, roofs of buildings, steam pumps, and plumbing on Hoffman Island, $4,000,' and 'repair of docks, and for dredging at upper boarding station, $1,000.'

These items are objected to and not approved, for the reason that the appropriations for the quarantine establishment are deemed quite sufficient without them.

'The corporation formed under and pursuant to the authority of chapter 492 of the Laws of 1870, for the purpose of constructing warehouses, docks and wharves for quarantine purposes in the bay of New York, shall not be deemed dissolved if it shall commence its operation within two years from the passage of this act.'

This item is objected to and not approved, for the reason that it is regarded as unwise and improper legislation to be inserted in an appropriation bill. If the corporation is to be revived, it should be done on its own merits and in a separate bill."

The items were not passed over the veto.

June 7. To the Assembly:

**Veto of a bill entitled "An act authorizing and empowering the common council of the city of Rochester to construct a lift, hoist, or swing bridge over the Erie canal at Lyell Street, in the city of Rochester."**

" This bill, as its title indicates, proposes to authorize the city of Rochester to construct a bridge over the Erie canal at a point named within that city; and, being a local bill, it is therefore obnoxious to the 18th section of the 3d article of the Constitution. The object could probably be secured by an amendment to the city charter, or by a clause in some general bill relating to the Erie canal; but, as an independent measure, relating solely to the construction of the proposed bridge, it is difficult to see how the restriction of the Constitution is to be avoided."

The bill was not passed over the veto.

June 7. To the Assembly:

**Veto of a bill entitled "An act in relation to mining companies."**

" It is proposed by this bill that every mining company, organized under the general law, or any special law of this State, shall, every three months, make a detailed quarterly statement of its financial condition, showing its assets and liabilities and operations for the preceding quarter; such a report to be made to the State Engineer and published in a daily paper at Albany and a daily paper in the place where the office of the company or its agent is located, for at least one week immediately after filing the report.

This requirement seems to be extremely onerous, if not unnecessary. The general law provides that a report of the financial condition of these companies shall be made and published annually; and no good reason is apparent for requiring such a radical change from the present mode as the one now proposed."

The bill was not passed over the veto.

June 8. To the Assembly:

**Veto of a bill entitled "An act to regulate the manufacture and sale of oleomargarine or any form of imitation butter and lard, or any form of imitation cheese, for the prevention of fraud and the better protection of the public health."**

"The object of this bill being so nearly identical with the one recently returned to the Assembly, without approval, it has induced me to give very careful consideration to its provisions, with the desire, if possible, to avoid further difference with the Legislature on this subject. Unfortunately, however, the inconsistencies of the measure are so glaring as to render it really more objectionable than the previous bill. By the first section, the use of coloring matter in any article or substance, in semblance of natural butter or cheese, not the legitimate product of the dairy, is prohibited, while the fourth section countenances and permits the use of coloring matter in natural butter and cheese. If injurious to public health, the State, in the exercise of its police powers, can undoubtedly prohibit the use of coloring substance in any article of food; but cannot and should not discriminate by preventing its use in one article and allowing it in another. There is no pretense, though, that the article prohibited is in any wise prejudicial to public health;

and this is substantially acknowledged by the terms of the fourth section.

The third section also prohibits the use of coloring matter in oleomargarine and other articles, in direct violation of privileges granted under the patent laws of the United States. The specifications on which these patents were issued provide definitely for the use of coloring matter, and unless it can be established that such use is detrimental to public health, the State has no power to prevent it.

The Constitution of the United States provides that no State shall 'deny to any person within its jurisdiction the equal protection of the laws.'[m] This guaranty of equal rights is one which every State in the Union must respect. It is designed to prevent discriminating legislation as well as unjust and partial administration of law. If the use of coloring matter is in itself harmless, the State has no power to say that certain manufacturers shall not use it while others may do so. If, on the other hand, it be deemed hurtful, then all should alike be prohibited from using it.

The advocates of this bill frankly acknowledge that the coloring matter is not deleterious to health, but claim that its use enables the manufacturers of certain unwholesome products to simulate natural butter and cheese, and thereby deceive consumers. If to prevent imposition, this evil is sufficient to warrant legislation, then the remedy should be directed against the injurious and unhealthy ingredients and not those admitted to be harmless.

The title of the bill has much significance when considered in connection with its terms and provisions. Besides other things, it proposes to 'regulate the manufacture of oleomargarine' and provides for 'the better protection of the public health.' The only regulation the bill itself undertakes in regard to the manufacture of oleomargarine is to prohibit the use of coloring matter, which is expressly authorized by a law of Congress. As for the better protection of the public health, there is absolute silence. The promise of the title is broken or perverted by the provisions of the bill.

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[m] U. S. Const. 14th am., § 1.

Another misfortune of this measure is, that it is an attempt under the guise of protecting the public health to benefit one class of producers at the expense and injury of another. No material evidence has been produced to demonstrate that the public health is menaced by the use of what the bill proposes to prohibit, hence the absence of any reference to the public health in the body of the bill is not surprising.

It seems to be a well established fact that chemical science and business enterprise have combined to produce an article which competes largely with the poorer products of our dairies. Desirable as it is to afford agricultural interests every possible advantage in such competition, the rights of other interests should not be ignored. We live in a land of law and liberty. Equal rights are guaranteed to all citizens. If their vocations be not dangerous or prejudicial to the public welfare, they cannot rightfully be restrained in the exercise of the largest liberty consistent with the law and order."

The bill was not passed over the veto.

June 8. To the Assembly:

**Veto of a bill entitled "An act supplementary to chapter 833 of the Laws of 1872, relating to the Metropolitan Transit Company."**

"Special charters for city railways enacted prior to the amendment of the Constitution in 1874, so far as relates to their original routes, are free from the restrictions now imposed by the fundamental law of the State.[a] All extensions of the routes as then fixed must be subject to the new constitutional provisions. In this respect the present bill is at fault inasmuch as it proposes to authorize a change in the location of two bridges over the Harlem river, to connect the same with the line of the company's road and with any railroad now or hereafter constructed.

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[a] Const. 1846, art. 3, § 18, added 1874. See Gilbert Elev. R. Co. v. Kobbe, (1877) 70 N. Y. 361; Re New York Elev. R. Co., (1877) *id.* 327; Negus v. Brooklyn, (1881) 62 How Pr. 291.

Among the several enumerated powers which the Legislature is prohibited from exercising in a private or local bill is that of 'granting to any corporation, association or individual the right to lay down railroad tracks.' This is a definite and absolute bar to the privilege this bill proposes to confer upon the Metropolitan Transit Company. Independent of any constitutional obstacle, the unlimited license which the bill aims to grant in changing the location of the two bridges 'to any point westerly of Eighth Avenue,' is especially objectionable. If the Harlem river divided a wilderness it might do to permit a railway corporation to make its own choice for its crossings, but considering the present and probable future character of the locality in question, such an unrestricted privilege should not be granted."

The bill was not passed over the veto.

June 10. To the Assembly:

**Veto of a bill entitled "An act relating to the supplying the city and county of New York with pure and wholesome water in greater quantity, providing additional facilities for obtaining and storing the same, and also a uniform system in drawing off the same from reservoirs and lakes in Putnam county, and for the better protection of such reservoirs, and lakes, and for the appointment of water inspectors to carry out the provisions of this act."**

"For the purpose of furnishing the vast and rapidly increasing population of the city of New York with pure and wholesome water, it has been necessary to seek a supply beyond the limits of the city. From the nature of local surroundings, the most convenient, available, and indeed only practicable, source from which to obtain this great necessity, was the territory lying directly north of Manhattan Island.

Under legislation beginning in 1834, and supplemented by acts adopted at almost every session of the Legislature since that date, the Croton water establishment has been built up, until it has become one of the most notable institutions of its kind in the whole world. With the continued growth of the city the Croton river proved inadequate to furnish the requisite amount of water, and an additional supply has thus been procured by utilizing a number of small lakes in Putnam county.

The city has acquired in due legal form, and now owns, by virtue of grants, on ample compensation therefor, amounting to more than two hundred thousand dollars, all of the property rights involved, and is entitled to the regulation and management of this great public work, so essential to the health and comfort of its citizens and the safety of their property.

The principal object of this bill appears to be to give to the county of Putnam, or rather to the clerk, sheriff and treasurer of the county, the right to appoint fifteen residents thereof as inspectors of the several lakes belonging to the city of New York, who shall direct and regulate the flow of water from said lakes; all of whom are to be paid by the city of New York.

This appears to me a flagrant and unreasonable invasion of the rights and privileges of the city which cannot be justified by any consideration of equity or propriety.

If the demand for this measure has its origin in any condition affecting the health of the neighborhood, an error has been committed in the remedy selected to secure relief. The State Board of Health is competent to afford all necessary aid in this regard. Until this authority, when appealed to, shall fail at least to secure proper alleviation on just cause of complaint, no application for legislation should be entertained.

The ninth section of the bill contains a remarkable provision, and one which is highly objectionable. Under special legislative authority the city has acquired ownership in the waters of several lakes, which by the terms of the section named is to terminate in 1886. The city has vested rights in these lakes which the Legislature has no power to abrogate. This section is believed to be directly in conflict with that provision of the Constitution of the United States which forbids a State from enacting any law impairing the obligation of contracts.°

While municipal corporations are subject to legislative control to an almost unlimited extent, they yet have rights above and beyond the reach of legislation. The possession of property legally acquired by a city is a right of which it cannot be deprived by legislative enactment.''

The bill was not passed over the veto.

June 10. To the Assembly:

**Veto of a bill entitled "An act to regulate the selection of the sheriff's jury in the city and county of New York."**

'' The sheriff's jury in the county of New York consists of a large number of persons selected from the general list of jurors of the county, and exempted from all other jury duty. The authority to make this selection is now vested in a board of several members, that also selects the grand jurors of the county. Membership of the sheriff's jury is regarded highly desirable, and is much sought after because of the exemption it affords from the more onerous requirements of other juries; and also for the reason that the duties demanded are usually performed after business hours, thereby avoiding serious interference with the ordinary vocations of business men.

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° U. S. Const. art. 1, § 10, clause 1.

The transfer of the power of selecting the jury to the sheriff alone, as proposed by the accompanying bill, is open to serious objection, inasmuch as it would afford opportunities for favoritism, and possibly worse abuses. By all means the selection of jurors should be free from partisan influence, which could not always be expected if intrusted to the officer named. Sheriffs are generally very zealous and efficient members of political organizations; and they should not, therefore, be intrusted with duties of this character.

No good reason is apparent why the selection of the sheriff's jury should be taken from the authorities now charged with this duty. The board consists of the mayor, the presiding judges of the supreme, superior and common pleas courts, the recorder and city judge, and this seems to be an appropriate composition of officials for the purpose designed. It is difficult to understand the motive of removing the power from the board thus constituted to a single officer, and especially to one so directly within the reach of political influence.

Aside from the foregoing considerations, a serious objection to the proposed change consists in the desirability of having the various jury lists selected in such manner as to insure in their composition a fair share of intelligence and respectability. The highest interests of the people are involved in the character of individuals who serve as jurors, and all danger of deterioration in this regard should be studiously avoided.''

The bill was not passed over the veto.

June 11. To the Senate:

**Veto of a bill entitled "An act to secure to inmates of institutions for the care of the poor, freedom of worship, and to provide for the visitation of such institutions for that purpose."**

'' Even a casual examination of the provisions of this bill will readily demonstrate, that while its objects may be correct in theory, it would be quite impracticable in its actual operation. Freedom of worship is guaranteed by the Constitution and is justly accepted as one of the most cherished rights of our citizenship.[p] To be able to enjoy that freedom, however, presupposes certain conditions, important among which is the ability of independent or self maintenance. Charitable institutions must of necessity be managed in the outset with regard to economical support, and next with a view to proper discipline. Provision for religious worship must depend upon circumstances peculiar to each case. To expose the management of these institutions to the caprice or notion of any five citizens who may desire to interfere, perhaps from mischievous motives, would be to excite endless confusion, and render discipline almost impossible.

The inmates of such places are not brought together primarily for the purpose of religious instruction, but for either charitable support or correction. Few of them have had opportunities, if any disposition, for spiritual teaching; and they should not be subject to the rivalries of sectarian zealots. The simpler forms of religious observance would quite likely be as beneficial to these unfortunates as the most elaborate and demonstrative ceremony. The conflict of authority and teaching that would inevitably arise from the enactment of this measure could only lead to injurious results alike to the inmates and the institutions."

The bill was not passed over the veto.

June 11. To the Assembly:

**Veto of a bill entitled "An act to fix the compensation of the keepers of the city prison in the city of New York."**

"The last Legislature earned the gratitude of the taxpayers of the city of New York by enacting a law which, to a moderate extent at least, relieved them from a portion of the burden which has for many long years sorely oppressed them. That act was aimed principally at the salaries of the employes of the city government, and the severest criticism it merited was that it did not go far enough. The long suffering property owners were, however, thankful for the partial relief thus afforded, and encouraged by the hope that the Legislature was at last disposed to protect their interests.

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[p] Const. 1846, art. 1, § 3.

The accompanying bill is a step in the wrong direction, and is therefore to be regretted. It proposes to confer upon the board of estimate and apportionment of the city of New York authority to fix and determine the amount of compensation of the keepers of the city prisons, at such rate as they may deem proper, not to exceed one thousand dollars per annum. The manifest object of the bill is to remove the present limitation to the salaries of these officials placed upon them by the act of last year.

The salaries as now fixed are quite sufficient to command abundant service, which meets the only consideration to be regarded. If the present employees are not satisfied, they are under no obligation to remain. Their places can be supplied so quickly that their absence will never be noticed. It is a notorious fact that the rate of compensation of city officials is far in excess of that paid by private employers for equal service, hence if any change is to be made it should be in the line of reduction.

The importance of the question at issue does not, however, depend upon the magnitude of the bill under consideration. Its main point is that of a beginning, which if encouraged would be followed by like measures with no end. There is no middle ground to be found in questions of this character. When the rule of retrenchment is once broken it is impossible to find a stopping place. An exception in favor of one class of employees promotes discontent in many others, and to discriminate between them is obviously impracticable. The only safe rule is to hold resolutely to the advantage which has been gained in the direction of economy.''

The bill was not passed over the veto.

June 13. To the Assembly:

**Veto of a bill entitled "An act conferring jurisdiction on the Canal Appraisers to hear, determine and award to John and James Tyrrell the damages by them sustained by reason of the loss of their canal boats, carried out of the canal through the break in the tow-path of the Erie canal, the claim to which said damages has been heretofore examined by said appraisers, and rejected on the ground of a want of jurisdiction to make an award therein."**

'' The title of the bill is a comprehensive statement of the object of the proposed enactment, from which it will be observed that it is designed to afford relief in a case where injury has resulted from the risks of canal navigation. The claim in question was filed in the office of the Canal Appraisers Feb. 21, 1872, and heard by that board in 1876, when it was dismissed for want of jurisdiction. There is serious doubt whether this case is not now barred by the Constitution, as to the limit of time within which claims against the State shall be entertained.[q]

The character of the claim is also a subject worthy of attention; and it may well be questioned whether the State should be held liable for injuries of this description. Assuming it to be true that the loss occurred without the fault of those in charge of the boat, and wholly in consequence of the break in the canal, is it such damages as would properly render the State liable? It would seem to be within the range of risks fairly covered by marine insurance. The State certainly cannot be regarded as an insurer. Boats navigate the canals subject to all the hazards incident thereto, and abundant opportunities of immunity by marine insurance are within the reach of all who in prudence desire to take such precaution. It is no fault of the State if the owners of boats who fail to provide against disaster suffer the penalty of their own neglect."

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[q] Const. 1846, art. 7, § 14, added 1874.

The bill was not passed over the veto.

June 13. To the Assembly:

**Veto of a bill entitled "An act to incorporate the Cornell Hose Company Number 2 of the City of Kingston, New York."**

"General laws now in force are available and fully equal to the purpose designed by this bill, hence its enactment would be a substantial disregard of the constitutional restriction upon local legislation.[r]

The municipal authorities of the city of Kingston are invested with abundant power with reference to the organization, management and discipline of its fire department, and all separate organizations of which it is composed. If any of the several companies have need of individual incorporation for the purpose of acquiring, holding or conveying property, this can readily be accomplished under the general statutes. For all other purposes it is manifestly for the best interest of the city that every branch of the fire department should be directly subject to the municipal ordinances relating thereto.

A careful reading of the accompanying bill indicates a design of placing this particular company in an attitude substantially independent of the city authorities at other times than when in actual attendance at fires. If this be the object, it would inevitably lead, sooner or later, to insubordination and trouble. One of the most useful and important functions of municipal government is a well-regulated fire department, and this can only be assured by wholesome discipline and harmonious co-operation of the entire organization."

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[r] Const. 1846; also art. 3, §18, added 1874, requiring the enactment of general laws.

The bill was not passed over the veto.

June 14. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *June* 14, 1881.

"Information received by me in a recent conference with an officer of the United States government, in regard to the relations of this State with the United States, in matters pertaining to the conduct of the war of 1812, warrants the belief that the interests of this State require early attention by a duly authorized commission, with power to take such action as shall be deemed best, and as shall protect the rights and privileges of the State of New York. The questions involved are of such importance that the Legislature is recommended to appoint a commission, as above suggested, in order that early attention may be given to the subject presented; and it is also recommended that a moderate appropriation be made to carry out the object in view.[19]

ALONZO B. CORNELL."

June 14. To the Assembly:

**Veto of a bill entitled "An act for the relief of Peter Kehr, John A. Kellner, and Louis Ott."**

"The claim for which this bill proposes to provide is one that the charter of the city of New York renders void and uncollectible. That instrument wisely provides that

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[19] Chapter 610, passed July 6, created a commission, composed of the Governor, Comptroller and Attorney General "to confer with the authorities of the United States with reference to the right of the people of this State in and to certain property acquired for purposes of defence during the war of 1812–15, and to take such action in relation thereto as the interests of the State may require," and report to the next legislature with such recommendations as they should deem expedient.

'no member of the Common Council, head of department, etc., shall be directly or indirectly interested in any contract work or business, or the sale of any article to be paid for from the city treasury.' All such contracts in which any such person is or becomes interested shall, at the option of the comptroller, be forfeited and void. A member of the firm which is alleged to have furnished certain office furniture for the use of the fire department, in 1873, was at the time an alderman, and as such was a member of the common council. By virtue of authority vested in the comptroller by the charter, that officer refused to pay for the articles in question, and remedy is now sought to relieve the claimants from this disability.

There can be no doubt of the propriety and necessity of a provision of this character to protect the city from collusion and wrong. If the city officials were at liberty to furnish their own supplies, there would be opportunities for favoritism and corruption without end. It is only necessary to state this proposition in order to realize its force and entire correctness. Why then should an exception be made in the present instance?

If the Legislature intervene to condone an offense of this description, it discredits the law under which the penalty was incurred, and tempts others to disregard its wholesome warning. Aside from the objections advanced, it would be dangerous to vitalize this claim, as a precedent would thus be established for other and more flagrant ones. If the city treasury be opened for the payment of these claimants, who can calculate the amount that would follow in satisfaction of other even more objectionable demands.

The Constitution provides that neither the Legislature nor other authority acting in behalf of the State shall audit, allow or pay any claim, which, as between citizens of the State, would be barred by lapse of time.[a] It is respectfully submitted that the Legislature should hesitate to legalize a claim against a city which were it made against the State would be barred by the Constitution. The transaction on which the claim is based having occurred in 1873, it would seem contrary to the spirit if not strict letter of the constitutional limit quoted."

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[a] Const. 1846, art. 7, § 14, added 1874.

The bill was not passed over the veto.

June 14. To the Assembly:

**Veto of a bill entitled "An act to amend chapter 593 of the Laws of 1880, entitled 'An act to improve Jackson Avenue in Long Island City.'"**

"The act which this bill is intended to amend was enacted last year, and provides for the improvement of Jackson avenue in Long Island City, at a cost not exceeding eighteen thousand dollars, to be paid by local assessments upon property situated within three hundred feet on each side of said avenue within the limits of the proposed improvement.

That portion of Jackson avenue embraced within the improvement district thus established is located beyond the built-up section of the city. The property fronting on this part of the avenue is largely occupied for agricultural purposes, and is not now, nor is it likely very soon to be, in demand for building. The avenue, which is one of the principal thoroughfares between the towns of Queens county and the New York ferries, is admitted to be in bad condition, and sadly needs improvement.

The present bill enlarges the limit of the improvement district somewhat, and increases the limit of expenditure from eighteen thousand to eighty thousand dollars. A large majority, and probably two-thirds of the owners of property fronting the avenue oppose this measure, protesting that it will be substantially destructive of the value of their property. They claim that practical confiscation of their interests will result from it; that no benefit would accrue to them for many years to come, if ever. They contend that the improvement is really for the gain or advantage of interests which will contribute nothing toward paying for it. It is further represented, on behalf of the remonstrants, that their present burden of taxation is extremely onerous, and far in excess of all revenue to be derived from the property liable to taxation. Assuming these representations to be worthy of credit, the adoption of the present measure would seem to be quite unwarranted. The city charter provides for local improvements upon the petition of the owners of lands to be affected thereby, and the Legislature should carefully discriminate as to legal rights, when called upon to interfere in such cases.''

The bill was not passed over the veto.

June 16. To the Assembly:

**Veto of a bill entitled "An act relating to the duties and fees of the clerk of Albany county, as county clerk, and as clerk of the courts of record in said county."**

''Among the wisest provisions of the Constitution are those contained in the amendments adopted in 1874, restricting legislative power with reference to local affairs. One of these, embraced in section 18 of article 3, declares that ' the Legislature shall not pass a private or local bill * * * creating, increasing or decreasing fees, percentage or allowances of public officers, during the terms for which said officers are elected or appointed.' The accompanying bill is directly and irreconcilably in conflict with this provision, both in general and in detail. Almost every section of the bill comes within the constitutional prohibition.

In other respects, also, the bill is objectionable, particularly so in providing that in many cases, where fees now to be paid by parties interested, are made a county charge; and the board of supervisors is required to audit and allow them in the same manner as other county charges. Certain duties which now devolve upon the assessors of the city of Albany for which they are compensated by the city are by the second section of this bill transferred to the county clerk, for which he is permitted to make a charge against the county.

Besides largely increasing the rate of fees now allowed by law to the county clerk, the bill creates new fees for duties which existing laws require him to perform without compensation; and in addition to all this, it provides for the payment to him of a salary of twelve hundred and fifty dollars per annum for attendance in person or by deputy upon the courts to be held within the County.

Even if the bill were not repugnant to the Constitution, under what pretense it can be justified is quite beyond comprehension. The office of county clerk in nearly every county is known to be provided with very generous emoluments by the general laws. In the most populous counties, indeed, the proceeds of the office are believed to be now too large. It seems to be pertinent to inquire, therefore, why an official, already rewarded beyond reasonable limit, should be favored by special legislation of this character."

The bill was not passed over the veto.

June 16. To the Assembly:

**Veto of a bill entitled "An act to provide for the payment, by the city of Brooklyn, to Patrick Duff, administrator of Francis H. Duff, the balance due on a contract with said city, for grading and paving Sackett street."**

"It is attempted by this bill to establish, as a liability against the city of Brooklyn, a claim of $3,975, with interest from March 4, 1870. Without pausing to inquire anything of the merits upon which the claim is based, the fact that the claimant failed to enforce its collection within the limit of time during which an action could have been maintained against the city is quite enough to cloud it with suspicion.

The Legislature is expressly prohibited from recognizing any claim against the State, which, as between citizens of the State, would be barred by the lapse of time.[1] What possible justification can there be for legalizing a claim against the city of Brooklyn which, if made under like circumstances against the State, could not be maintained?"

The bill was not passed over the veto.

June 20. To the Assembly:

**Veto of a bill entitled "An act to authorize the retirement of teachers in the public schools of New York and Brooklyn."**

"Grave questions of public policy are involved in the provisions of this bill. The proposition to create a class of pensioners to be permanently maintained by general taxation is too important to be accepted on mere sentiment. A system like the one proposed could only be justified on the ground that the class to be thus favored had rendered service to the public of exceptional value, or that the vocation pursued was especially hazardous. Can it be demonstrated that either of these alternative conditions arise in the case of public school teachers?

Provision is made for retiring army officers who, after forty years of continuous service, attain the age of sixty-two; and soldiers are pensioned on account of disability incurred in active service. Policemen and firemen, whose duties expose them to extraordinary perils, both to health and life, are also frequently rewarded with pensions. It cannot be fairly claimed that the occupation of school teachers is in any proper sense injurious to either health or life. On the contrary, with due care and prudence, their calling is far more safe than many others that might be enumerated.

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[1] Const. 1846, art. 7, § 14, added 1874.

Teaching is a creditable and meritorious pursuit, and one of great usefulness; but it does not involve their personal sacrifice or undivided devotion to the public welfare; nor does it require greater ability or preparation than the other professions of life. While the service is exacting and requires constant attention to duty, it is neither arduous nor exhausting. The compensation as a rule is fairly remunerative, and competent talent commands ready employment.

Turning from the general question of the propriety of establishing a system of the character indicated, the particular features of this measure invoke careful consideration. Teachers employed for an aggregate period of twenty-five years, or disabled by illness or accident occasioned in the performance of duty after fifteen years' service, can apply to be retired, and the board of education of New York or Brooklyn, by a two-thirds vote, may retire them. Any teacher so retired shall thereafter be entitled to an annual allowance, to be fixed by the board of education at the time of retirement, which shall not be less than one-half the salary received by such teacher when so retired. The pension is therefore to be at least one-half, and may be any higher rate, up to full pay; and this, too, presumably for life.

The bare statement of these premises is sufficient to demonstrate their remarkable character. Teachers usually begin their duties in early life; probably not above twenty years of age on an average. If continued in unbroken employment the privilege of retiring would be reached at the age of forty-five. At this time advantage might be taken of the provision for retirement, and having secured the right allowed, the pensioner could seek other and possibly more lucrative employment than that of teaching. Other suggestions will readily occur how, in many ways, the system would be exposed to an unreasonable and improper advantage, which could be almost indefinitely stated.

Assuming that a pension system may be adopted, several features of this bill should be revised and corrected. Continuous instead of aggregate service ought to be a condition precedent. The action of the board of education should also be subject to review by the mayor. The rate of pension should be half pay or less instead of more, and be subject to the action of the board of education from year to year.

Another consideration presents itself in connection with this measure which cannot be readily solved. Would it really benefit the teachers, as a class, to offer this especial inducement for them to remain contented in that vocation? Will it not take away from them much of the ambition to improve their condition and qualify themselves to seek other and more profitable duties? Teaching is frequently made a most useful preparation for other pursuits, and it may well be questioned whether the inducements are not now great enough to the younger members of the profession to adopt it permanently.

At all events, no harm can result from a postponement of the question for another year. If more mature consideration of the subject shall approve it as a wise policy, a measure can then be perfected and enacted with such safeguards as more deliberate consideration shall suggest. Once created, the pension system will with difficulty be restrained, if it could ever be abolished. If it is to be ordained and established, it should be by the enactment of a careful and well-matured law."

The bill was not passed over the veto.

June 21. To the Assembly:

**Veto of a bill entitled "An act to amend chapter 424 of the Laws of 1876, entitled 'An act in relation to streets in Long Island City.'"**

"This is a proposition to close that portion of 9th street in Long Island City which makes direct connection with the East River. Portions of 3d and 5th streets have heretofore been closed by legislative action, thereby materially reducing the opportunity and convenience of access to the water frontage of the city. This section of the city is principally occupied for commercial purposes, and care should be taken lest the public welfare be jeopardized by closing streets which are necessary for common use.

Citizens have expressed earnest opposition to the provisions of the bill; and the common council, by unanimous vote, condemns it as unwise and detrimental to the interests of the city. It can hardly be doubted that the members of the common council, being familiar with the locality in question, as well as with all the circumstances connected therewith, are better qualified to form an intelligent judgment on the subject than the Legislature can do."

The bill was not passed over the veto.

June 21. To the Assembly:

**Veto of a bill entitled "An act to amend chapter 341 of the Laws of 1864, entitled 'An act in regard to certain officers in the several counties of this State.'"**

"There is apparently no reason to doubt that a good object was intended to be secured by this bill, but unfortunately the amendment introduces a subject which is not strictly pertinent to the act amended. Its effect would be, therefore, to throw the whole subject into confusion. The present usefulness of the old law would be impaired, if not destroyed, while the new one would be of very doubtful utility, if not absolutely injurious in material respects.

The act of 1864 relates to, and was intended to secure complete accountability from officers in the several counties receiving money on account of any fine or penalty, or other matter of similar character. It provides that a report, under oath, giving certain particulars as to the receipt of such money, shall be made every year in the month of November, to the board of supervisors, and filed with the clerk of the board on or before the fifth day of November. Each officer who shall have received such moneys is required within ninety days after receiving the same to pay it over to the county treasurer. The second section, however, expressly provides that the act shall not apply to moneys received by any town or city officer in the official capacity specially appropriated to any town or city purpose.

The present bill amends the first section of the act referred to, and includes in addition to the officers named therein, every officer 'who shall make or is authorized by law to make any purchases for, or draw upon the county treasurer for, or pay out any money for any purpose whatsoever for or on account of the county, town or city in which he is such an officer.' If the bill became a law the result would be that the first section would include a large class of officers as to whom the second section of the act thus amended, declares shall be exempt from the operations of the act. Which of these two antagonistic sections is to prevail and have effect it is quite impossible to determine.

The real difficulty about the proposed amendment, however, consists in the attempt in one law to regulate two classes of officers, whose duties are not similar. Those to whom the original act applies are officers who collect certain public revenues, including fines, penalties, etc., while the amendment deals with persons who are really disbursing officers and have to do with the direction of public expenditures. The duties of the two classes of officials are wholly different and must almost of necessity be provided for in separate acts; in such manner at least as will avoid conflict and inconsistency.

Confusion would also be caused under the operation of the amendment in the financial affairs of many of the cities. The accompanying bill has evidently been drafted with sole reference to the conduct of the affairs of rural counties, while by its terms it is made applicable to every city, town and village in the State. To amend the bill so as to exclude the cities from its operation will have the effect of exempting them from the operation of the present law, which ought not to be done, as it would relieve a large number of officials from the salutary restraint of a useful law.

The only safe course, therefore, appears to be to disapprove this bill; although as stated in the beginning, its manifest object is to accomplish beneficial results. It is to be regretted that the bill was not more carefully drawn; and either presented as a new and independent measure or adopted as an amendment of the existing statute where its incorporation would have been appropriate and desirable."

The bill was not passed over the veto.

June 22. To the Assembly:

**Veto of a bill entitled "An act to further amend chapter 534 of the Laws of 1879, entitled 'An act for the preservation of moose, wild deer, birds, fish and other game,' as amended by chapter 531 of the Laws of 1880."**

"The Constitution provides that 'excessive bail shall not be required, nor excessive fines imposed, nor shall cruel and unusual punishments be inflicted, nor shall witnesses be unreasonably detained.'[u] Manifestly the object of this provision is to guard and protect the weak and unfortunate from oppression, either in the enactment or execution of laws; and it should be quite as binding upon the Legislature in the exercise of its peculiar prerogative as upon the magistrate or subordinate officer who is charged with the duty of enforcing the statutes.

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[u] Const. 1846, art. 1, § 5.

In the progress of legislation with reference to the protection of game and fish there has been a constant tendency to antagonize this beneficent provision of the Constitution. From year to year penalties have been made more and more severe; and offenses have been largely increased in variety and number. Each successive Legislature has amended the laws on the subject so that it has become next to impossible for the people to understand what is permitted or forbidden. Instead of just and stable laws that would command respect and obedience, we have confusion and uncertainty, with constant risk of offending on the part of those ever so well disposed.

Some of the provisions of the accompanying bill are obviously cruel and unusual, and in this regard must be deemed obnoxious to the constitutional restriction referred to. For instance, the penalty for shooting a wild fowl from any steam or sail vessel, as prescribed by the existing law, is ten dollars, while this bill increases it to fifty dollars. This change cannot be justified as reasonable or in any degree consistent with the character of the offense named. Again, in the amended thirty-third section, this bill provides that 'no person imprisoned on execution under this act shall be bailed or admitted to the liberties of the jail.' No sane person will attempt to deny that this provision is both cruel and extraordinary, nor will it be claimed that it is in any sense necessary for a proper and efficient execution of the law.

The amendment proposed to the thirty-fifth section provides that 'courts of special sessions in towns and villages, and the several courts in cities situated in the county in which the offense was committed, or in any adjoining county having jurisdiction to try misdemeanors in their own county, shall have jurisdiction to try offenders in all cases occurring under this act;' and 'it shall be the duty of every sheriff, under sheriff, deputy sheriff, policeman, constable, etc., to arrest wherever found within this State, without warrant or process, any person whom they shall find violating any of the provisions of this act, and immediately to bring such offender before any magistrate residing in the county in which the offense was committed, or in any adjoining county, for examination and trial.' Thus the jurisdiction of the most inferior courts is extended over several counties, and officers are authorized to convey offenders wherever they please within the limits of any adjoining county. Comment is hardly necessary to illustrate the imprudence and inconsistency of such a proposition.

When an offense is committed against the person or property, either in the nature of a misdemeanor or a felony, it is the duty of the officer making arrest to take the offender before the nearest magistrate for examination. Thus, however grave the crime committed, whether it be murder, burglary or robbery, the offender must be taken before the nearest magistrate; while if the offense be simply catching fish or shooting a bird out of season, the offender may be taken before any magistrate in perhaps any one of a half dozen counties, for examination or trial. The case in this respect is one of pleasure or prejudice on the part of the officer making the arrest.

This remarkable provision is also antagonistic to the Constitution of the United States, which guarantees to every person charged with crime 'the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law.'[v]

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[v] U. S. Const. 6th am., applicable only to cases in Federal courts. Eilenbecker v. District Court, (1890) 134 U. S. 35. See also art. 3, § 2, clause 3.

The only application of this guaranty that seems reasonably consistent is that the offender under the game law shall be tried, as in all other cases, by the nearest court having jurisdiction. To extend the jurisdiction in the manner proposed is wholly inconsistent with rational theory.

Fishing and hunting were among the first pursuits and privileges enjoyed by our forefathers in the early occupation of this country. No interests of community especially vital in character require that these privileges should be restrained; but with the advance of civilization a sentiment has found expression in the enactment of laws extremely rigid and restrictive. Infractions of the game laws are not such serious offenses against the peace and welfare of the people as to justify the odium sought to be attached to them. On the contrary, the penalties should be regulated so as to compare reasonably with those provided for offenses of a similar grade; and the administration of the laws should be as simple and effectual as will comport with the dignity of the State.''

The bill was not passed over the veto.

June 23. To the Assembly:

**Veto of a bill entitled "An act giving the surrogate of Clinton County additional powers."**

"The express purpose of this bill is to confer upon the surrogate of Clinton county hereafter elected as a separate officer, all the powers and duties performed by a county judge out of court. The Constitution provides that county judges shall exercise the functions of their particular office and 'such other duties as may be required by law.'[w] Under this authority the Legislature has by general law invested them with certain powers of justices of the Supreme Court at chambers. It is presumed, therefore, that the real purpose of the accompanying bill is to confer upon the surrogate the same powers of a judge of the Supreme Court as now exercised by county judges.

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[w] Const. 1846, art. 6, § 15, am. 1869.

In creating the office of county judge, the Constitution says that 'the county judge shall also be surrogate of his county; but in counties having a population exceeding 40,000 the Legislature may provide for the election of a separate officer to be surrogate.'[x] There is nothing in this language to convey the idea that surrogates were to be vested with judicial powers; and nowhere in the Constitution is authority given to the Legislature to confer upon these officers additional powers or duties of judicial nature. Inasmuch as the Legislature is expressly authorized to extend the jurisdiction of county judges, the conclusion follows that the omission to make similar provision with reference to surrogates leaves the Legislature with no authority to extend their powers.

The authority and jurisdiction of justices of the Supreme Court are derived directly from the organic law, and cannot be abridged or annulled by the Legislature.[y] If like functions can be conferred upon surrogates by act of the Legislature, then by the same means can justices of the peace and county clerks be endowed with similar prerogatives. This proposition admitted, what limit would there be to the exercise of legislative control in the direction indicated? If judicial authority may thus be dispensed, what significance attaches to the constitutional jurisdiction with which the Supreme Court was originally clothed? The true theory of our form of government contemplates that the several branches thereof shall be essentially independent of each other, in the discharge of their separate functions, with due accountability as to the proper exercise of their respective powers and duties. In this view it is hardly to be supposed that the framers of the Constitution intended that the Legislature should have indefinite and unchallenged supervision of the judicial department to the extent of distributing like or concurrent authority throughout all appellate and inferior branches. It is more reasonable and consistent to assume that where no such indiscriminate power is expressly granted by the Constitution, it was not intended that it should be possessed or exercised."

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[x] See note *w*.

[y] Const. 1846, art. 6, § 6, am. 1869.

The bill was not passed over the veto.

June 24. To the Assembly:

**Veto of a bill entitled "An act for the relief of Jacob A. Hatzel."**

"Abundant evidence demonstrates that a gross fraud was perpetrated at the election in 1878, whereby Jacob A. Hatzel was deprived of a certificate of election as an alderman of the city of New York. Fraudulent returns gave the certificate of election to his adversary, who served as alderman throughout the term and drew the salary. Mr. Hatzel contested the election before the board of aldermen and through the courts; but not till after the expiration of the term of office was he able to establish his rights, when it was too late for him to realize any benefit from the contest, beyond the moral satisfaction of securing a vindication in the controversy. The accompanying bill proposes to require the city of New York to reimburse Mr. Hatzel for the loss of salary to which he would have been entitled, but which was paid to his opponent while serving as *de facto* alderman; and also for the legal expenses incurred by him in making the contest. In view of the outrage perpetrated upon him, which was amply demonstrated by judicial decision, there would seem to be peculiar propriety in making suitable reimbursement; but, unfortunately, the Constitution presents an absolute bar to such proceeding, by declaring that ' no county, city, town or village shall hereafter give any money or property, or loan its money or credit, to or in aid of any individual, association or corporation.'[1] Reimbursement, under the circumstances, is simply a gratuity, which the foregoing constitutional restriction expressly prohibits.

A law should be enacted to prevent the payment of official salaries to *de facto* incumbents, when their titles are contested, without a suitable bond of indemnity, by which the contestant, if successful, should be enabled to recover the salary to which he may be justly entitled. This would protect all parties according to their real merits, and also remove much temptation which now exists for the violation of the election laws."

The bill was not passed over the veto.

June 25. To the Senate:

**Veto of a bill entitled "An act to provide for the payment, by the city of Brooklyn, to William C. Kingsley and Abner C. Keeney, of money due for work and material in the construction of a storage reservoir, and for issue of city bonds."**

" For the purpose of furnishing an increased supply of water for the city of Brooklyn, the board of water commissioners were authorized by chapter 47 of the Laws of 1871, to carry into effect a plan for extending the waterworks and constructing additional reservoirs, conduits and other structures necessary for that purpose, which had previously been considered and approved by the board of aldermen. The act fortunately contained a limit to the expenditure permitted to be incurred in these words: ' Provided the whole expense thereof shall not exceed the sum of $1,400,000.' Under the provisions of the law, the water board acquired the necessary lands, ponds and streams to furnish the requisite amount of water and to provide a suitable storage reservoir. The site selected for this purpose was the bed of a stream containing an area of about 230 acres, and extending about two miles in length, more or less. A contract for excavating and completing this reservoir was made on certain terms and conditions. It was agreed, for instance, that 55 cents per yard should be paid for earth excavations, of which it was estimated that there would be about 1,400,000 yards. Early in the progress of the work, however, the plans were changed, and the level of the reservoir was lowered three feet, thus increasing the amount of excavation several hundred thousand yards beyond what was calculated when the contract was made. Whether this change of plan was dictated in the interest of the contractors or otherwise is not fully apparent, but there is little room for doubt that the effect was to largely increase their profits. The entire management of the job appears to have been directed in their favor. Profitable work was increased, and that which was not so favorable was abandoned. More than $1,000,000 was paid on account of excavation, exclusive of $100,000 and upward allowed for 'extra haul' of material removed. The contract was made in 1872, and the work continued until 1875, during a large portion of which time the price of labor was reduced nearly one-half from the ruling price at the time the bids were made. Thus the profits of the contractors were swelled both by cheaper wages paid for labor and the more profitable kind of work resulting from the changed plans.

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[1] Const. 1846, art. 8, § 11, added 1874.

Finally, in 1875, the city authorities felt constrained to abandon the contract and finish the reservoir themselves, under the direction of the water board. This excited protracted litigation, in which the contractors recovered about $100,000, in addition to what had been paid them in the progress of the work. The balance of their claim was rejected by the courts on the ground that no legal liability could attach to the city beyond the limit authorized by law. This balance is now sought to be made valid against the corporation by the enactment of the accompanying bill. It is manifest that contractors have already been paid a sum which not only reimbursed them for the value of all the work done, but also provided them with generous profits, and it is submitted that where the courts have found that no further liability can rest upon the city, the Legislature should not compel the city to contribute another $100,000, simply to swell the gains already realized under a contract which, in its conception and terms, was plainly prejudicial to the interests of the city. The present Legislature found it necessary several weeks ago to relieve a certain locality of the city of Brooklyn from local assessments amounting to about $100,000, and charge the same upon the city at large. It is alleged an exigency arose for this from the fact that in the construction of certain sewers the city had been defrauded to such an extent that the assessments could not be enforced. If these allegations are true, the fact that the same parties were the contractors in both instances would seem to make it quite appropriate that the claim now made should be offset by these repudiated assessments. In view of the large emoluments derived from both contracts, no serious hardship is likely to be suffered by the claimants."

The bill was not passed over the veto.

June 28. To the Assembly:

**Veto of a bill entitled "An act to release the interests of the people of the State of New York in certain real estate in the town of Stamford, Delaware county, and in certain lands in the county of Clinton, New York."**

"The statement contained in the petition on which the provisions of this bill are based does not appear to establish a proper case for the voluntary surrender of the interests of the people of this State in the property in question. From the representations made therein, it appears that one Daniel Stewart, residing at Hobart, Delaware County, died in July, 1867, seized of a certain real estate in said county, and also in Clinton county, the value of which is stated to be approximately $1,800. It also appears that the deceased left no heirs residing in the United States, and that the nearest relatives are cousins residing in Scotland.

The petitioner, Catherine S. Wakeman, further represents that at the time of the decease of said Stewart, and for a long time prior thereto, an engagement of marriage existed between them, and that upon three occasions when the deceased required the aid and assistance of others, because of ill health, the petitioner took the principal care of him; and he promised and agreed to transfer to her sufficient of his property to reward her for the services rendered. But no such provision was ever made in her behalf during the life-time of the deceased, whereupon petition is made for the release of the interests of the people in all of the estate of the said Stewart.

Nothing in the petition indicates the extent or value of the services rendered, except the expression of 'three occasions,' which cannot be fairly interpreted as indicating any long continued or especially devoted service. On the contrary, from the description of the services, they must be regarded as incidental and disproportionate to the compensation claimed. The petition does not state whether any compensation was ever realized on account of the services alleged to have been rendered. If no payment was made, then very likely the petitioner may have an equitable claim against the estate for the value of services rendered; but all of this should be clearly stated and satisfactorily established. Certainly, the interest of the State should not be released without such ascertainment of the rights of the claimant as to establish a just and valid demand for the property in question.''

The bill was not passed over the veto.

June 28. To the Assembly:

**Veto of a bill entitled "An act giving to corporations organized under chapter 40 of the Laws of 1848, entitled 'An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes,' and the acts amending and extending the same, the same rights as natural persons to own, sell and deal with patents and rights, licenses and royalties thereunder."**

"In framing laws for the formation and government of corporations care has been taken customarily to confine the powers granted within certain specified bounds. The courts, when called upon to interpret these laws, have uniformly construed them as limited in their scope to the objects expressly provided, according to the terms of the enactment. It would be manifestly improper, therefore, to enlarge by general statute the powers of a certain class of incorporations with reference to owning and dealing in patents. If this peculiar license is to be given to corporations organized under one general law, common justice requires that the same privileges should be conferred upon all other corporations created pursuant to every general law.

There can be no reasonable doubt that the corporations described in the accompanying bill are already competent to acquire, own, use, grant licenses under, and sell any such patents as may be pertinent to and useful for their ordinary business, or the purposes of their organization. This right has been affirmed repeatedly by the courts in actions under the patent laws, where corporations have appeared as parties in litigation. If the aim of the bill is to confer upon the corporations organized under a particular law designed for a different object the right to deal in patents generally or exclusively as a business, it may be fairly questioned whether it would be sound policy to promote such purpose."

The bill was not passed over the veto.

June 28. To the Assembly:

**Veto of a bill entitled "An act to exempt the town of Coeymans, in the county of Albany, from the provisions and operation of chapter 175 of the laws of 1877, entitled 'An act creating a board of town auditors in the several towns of this State, and to prescribe their powers and duties."**

"As indicated by its title, this bill proposes to exempt the town of Coeymans, in the county of Albany, from the operation of the town auditors act, which is described as chapter 175 of the laws of 1877. By inadvertence, or otherwise, however, the chapter cited is not the town auditors act, but is one that relates to a wholly different subject, being an act conferring certain powers upon the commissioners of highways of the town of Glenville, Schenectady county, and having reference solely to the affairs of that town. The act creating a board of town auditors in the several towns of this State, and to prescribe their powers and duties, was enacted in 1875, and is chapter 180 of the laws of that year. This is undoubtedly the act from which it was intended to exempt the town of Coeymans, but this error in citation would obviously defeat that object. My views in regard to the question of making further exemptions from the law creating a board of town auditors were very fully stated in returning with objection, under date of May 16 ult., Assembly bill No. 39, entitled 'An act to exempt the counties of Chemung and Greene from the provisions and operations of chapter 180 of the Laws of 1875,' etc. Reflection has only tended to confirm the opinion expressed on that occasion."

The bill was not passed over the veto.

June 29. To the Senate:

**Veto of a bill entitled "An act in relation to the building of docks in the city of New York."**

"Two separate propositions are embraced in this bill; both relating to the duties of the dock department in the city of New York. The first authorizes and directs that department to construct a pier for the use of the police department, to be located between the new pier, number one, North river, and Castle Garden; and when completed, to be set apart for the exclusive use and control of the police department. What necessity or justification there may be for the expenditure requisite for this purpose is unknown to me beyond the representation of the police department in its favor. The second proposition is embraced in the fourth section of the bill, prohibiting the dock department from proceeding with contemplated improvements on the water front between Twenty-second and Twenty-fourth streets, North River. Against this provision the dock department makes emphatic protest, sustained by what appear good and substantial reasons.

The commissioners of the dock department represent that ' the permanent improvement of the water front between Twenty-second and Twenty-fourth streets is in rapid progress of construction, providing for the two hundred and fifty feet River street and six new piers greatly increased in length and width, four of which are now building. The contract for another is to be awarded to-morrow; while the location for the other near Twenty-third street has been agreed upon with the parties interested, and the lines been approved by the commissioners of the sinking fund, as required by law. If this bill became a law, the city would lose one pier at Twenty-third street, the rental value of which would be $30,000 per annum. The most unfortunate feature of the bill, however, is that it will absolutely stop the construction of the new bulk head between the points named a distance of about six hundred feet, thus interrupting an elaborate and well-considered plan for the improvement of the North river water front, which, under the sanction of previous legislation, has for years been progressing at an expenditure already incurred of several millions of dollars. One of the most important features of this improvement is the uniform River street two hundred and fifty feet wide, upon which large expenditures have been made both above and below the locality in question. To stop the work, as now proposed, would reduce the whole plan to an absurdity and nullify its main object.

In view of expressions of this character from officials upon whom rests the responsibility of this great public improvement, it would be manifestly unwise to interfere with its development by arbitrary legislation of the kind proposed. The commissioners, it must be presumed, are competent to form a correct judgment of the proper course to be pursued under the circumstances; and until it is demonstrated that their position is wrong, those having less opportunity of informing themselves as to the merits of the question at issue should heed their advice."

The bill was not passed over the veto.

June 30. To the Assembly:

**Veto of a bill entitled "An act in respect to the testimony or the offering of testimony, of certain persons who serve as agents, informers or spies."**

" The uniform tendency of legislation in this State for many years past, in both civil and criminal cases wherein questions of fact were at issue, has been toward admitting almost every kind of evidence, and permitting all parties to give testimony regardless of their relations to actions. By this practice every shade of evidence is given to the court and jury for whatever it may be worth. The wisdom and propriety of such policy have been so fully demonstrated as to place it beyond qestion. The proposition contained in this bill to exclude the evidence of a particular class of persons is in direct opposition to the established rule of the State as indicated by many years of legislation and practice. A reversal now should not be permitted, except as the result of mature and wise deliberation. The class of evidence it is thus proposed to exclude has always been regarded as competent, and no good reason appears why it should not so continue. Every person accused of crime is permitted to testify in his own behalf, and the exclusion of the testimony of any witness is in effect to declare that it is more criminal to see a crime committed than to perpetrate the criminal act itself. The mere statement of such a proposition is sufficient to illustrate its utter absurdity. The exclusion of evidence otherwise lawful and proper cannot be sought in the interest of society, or for the protection of innocent people.

The greatest obstacle to the execution of the penal statutes and the enforcement of penalties prescribed is the difficulty of procuring evidence upon which the prosecution of offenders may be successfully undertaken. Public officers on whom the responsibility of such prosecution rests, however faithful and zealous, are frequently unable, with the means at command, to obtain adequate proof to secure conviction. The numerous and flagrant violations of these laws, in several of the principal cities of the State, have induced philanthropic and law-abiding citizens to organize societies in aid of the public authorities in this regard. These agencies have rendered invaluable service to the public by co-operating with the prosecuting officers of the State in their efforts to enforce and maintain the mandates of law. The inevitable effect of the accompanying bill, should it become a law, would be to deprive the people of the assistance of these volunteer auxiliaries.

Notwithstanding the express provisions of the Constitution, and laws enacted in accordance therewith, prohibiting the sale of lottery tickets within the State,[aa] this nefarious traffic has for years been carried on in open defiance of solemn enactment. Within the past year renewed efforts on the part of the public authorities have resulted in the punishment of many reckless offenders, and substantial progress has been made toward the suppression of the evils in question. Eventual success in establishing and maintaining the supremacy of the Constitution and laws for the suppression of vice and crime depends materially upon the encouragement and co-operation these voluntary societies may be enabled to render to the law officers of the State.

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[aa] Const. 1846, art. 1, § 10.

If the proposed disability is sought to be imposed in consequence of the misconduct of spies and informers, an error has evidently been committed as to the remedy for such abuses. If evil exists in the methods employed to an extent demanding additional legislation, it should be directed against the wrong-doers, to secure their punishment. If any person procure the commission of crime, with the sole intent of informing against his victim, who may be led unawares or enticed into a violation of law, he should be punished as *particeps criminis;* but to declare by statute that the testimony of no person, without qualification, who has witnessed the commission of an offense, or is knowing to any circumstance connected therewith, shall be received in evidence, because he has lodged information of the crime committed, is rather a violent and dangerous presumption.''

The bill was not passed over the veto.

July 1. To the Assembly:

**Veto of a bill entitled "An act to provide for the distribution of books, slates and other necessary articles, free of charge, to the pupils attending the public schools of the city of Brooklyn."**

"The State of New York has advanced to the very extreme of liberality in providing advantages for public education. Facilities absolutely free of expense are now afforded to every child within the broad expanse of this great Commonwealth. Failure to acquire the rudiments of useful learning, under existing circumstances, will be a deserved and lasting reproach upon those neglecting the ample opportunity so generously provided. Nowhere within the State has the system of public education been so highly developed as in the city of Brooklyn. Probably no other city in the world offers equal facilities for the cultivation of the rising generation. This enviable distinction, which reflects so much credit upon the citizens of that city, has been accomplished under existing laws.

The accompanying bill, as its title indicates, proposes to provide for the distribution of books, slates and other necessary articles, free of charge, to the pupils attending the public schools of the city of Brooklyn, whose board of education already possesses all needful authority and jurisdiction in this regard; and hence this proposition is altogether unnecessary. Pupils destitute of the means to provide themselves with the articles mentioned are now furnished with them at the public expense. Those who can furnish their own books and other requisites should not be treated as charity scholars. There is no more reason why they should be supplied with books free of charge than that they should be furnished with shoes or clothing at public cost."

The bill was not passed over the veto.

July 1. To the Assembly:

**Veto of a bill entitled "An act to provide for the better protection of life and property in the public schools of the city of Brooklyn."**

"The public schools of the city of Brooklyn are under the jurisdiction and management of the board of education, which is responsible for the care and maintenance of the school edifices as well as for the safety of the teachers and pupils under their charge. The magnitude of this responsibility may be realized when it is considered that approximately 100,000 persons are in daily attendance at these schools. The board of education is invested with ample authority to make every requisite provision for the protection of property and the safety of life and limb. If additional precaution is necessary to render the school buildings safer than as at present arranged, it is the duty of that board to so provide. The proposition made in the accompanying bill is to confer authority upon the fire department to provide each school building with a suitable fire alarm to be connected with the fire alarm telegraph system now in operation in the city of Brooklyn. There should be no divided responsibility about a matter of such vital importance as this. The duty should remain with the board having the control and management of the schools.

The most serious objection to this bill, as well as to the bill providing for school books, is that the subjects to which they relate are peculiarly under the jurisdiction of the local authorities of the city of Brooklyn, and, therefore, outside of the legitimate sphere of the Legislature. The Constitution requires the passage of general laws for certain enumerated purposes, and for all other cases which, in the judgment of the Legislature, may be provided for by general laws.[bb] To meet all requirements with reference to the public schools, general laws have already been provided, and, hence, the Constitution virtually forbids legislation of the character proposed. The board of education, in conjunction with the board of estimate, in the city of Brooklyn, being already endowed with full authority in all matters pertaining to the public schools, the subject in question should go there for determination."

The bill was not passed over the veto.

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[bb] Const. 1846, art. 3, § 18, added 1874.

July 2. To the Assembly:

**Veto of a bill entitled "An act to authorize and direct the commissioners of the department of public parks of the City of New York to alter and amend their maps made and adopted in pursuance of chapter 604 of the Laws of 1874, and chapter 436 of the Laws of 1876, by striking therefrom a proposed road leading from a point near Spuyten Duyvil and Port Morris railroad company's depot at Spuyten Duyvil to Broadway, with the parks connected with it and known as the Spuyten Duyvil parkway, and to lay out a new road and proceed to open a road from said Spuyten Duyvil depot to Broadway, and to provide for the payment of the expenses and compensation of the commissioners and others in the Spuyten Duyvil parkway proceeding."**

"On the 1st of January, 1874, the territory previously embraced within the towns of Morrisania, West Farms and Kingsbridge was detached from the county of Westchester and annexed to the city of New York, as constituting and comprising the 23d and 24th wards. At the ensuing session of the Legislature, by chapter 604 of the Laws of 1874, the commissioners of the department of public parks were vested with 'exclusive power to lay out, survey and monument all streets, roads, avenues, public squares and places within that part of the city of New York, north of 155th street on Manhattan Island, and all of the 23d and 24th wards, of such width, extent and direction, and upon such grades as to them, or a majority of them, shall seem most conducive to the public good; and to change the location, width, course, windings and grades of the streets, avenues and roads now laid out within the said part of the city of New York, or to discontinue or close the same or any portion thereof, as to the said commissioners, or a majority of them shall seem most conducive to the public interest, and in like manner to devise and prepare plans for the proper sewerage and drainage of the 23d and 24th wards.' The act also provides in detail for the execution of the duties thus imposed; and operating in conjunction with general laws providing for opening and working streets in New York, it makes a complete and comprehensive system for the improvement of this portion of the city, covering an area considerably larger in extent than the entire city prior to the annexation.

The foregoing act was followed a few months later by the adoption of the amendments to the Constitution which provide that 'the Legislature shall not pass a private or local bill laying out, opening, altering, working or discontinuing roads, highways or alleys, or for draining swamps.'[cc] The Court of Appeals, in deciding the Western Avenue case (67 N. Y. 574[dd]) sustained the act in question, because 'the improvement contemplated could not be made * * * under the general laws,' and 'the act provides for that which is not ordinarily done under the general laws for regulating public highways or the streets of a city.' The only fair inference to be drawn from this decision is that where a definite system of highway improvement has been provided, local legislation affecting that system in detail, or by special exception, cannot be permitted.

The accompanying bill directs the park commissioners to amend their map of that portion of the city before described, made pursuant to the act of 1874, 'by striking therefrom the road, avenue or parkway, shown on said map, commencing at a point near the depot at Spuyten Duyvil and running thence in a general north-easterly direction to Riverside avenue, and thence to a certain point named on Broadway, and also by striking therefrom all parks or places connected with said proposed road, and the said road, roads, parks, places and parkways are hereby discontinued on said map.' The commissioners are further directed to lay out a new street or avenue, not to exceed sixty feet wide, substantially over the same line as the one stricken from the map. It is difficult to conceive of a more direct and positive infraction of the constitutional restriction cited than these provisions. It is precisely the reverse of the Western avenue case, where local legislation was permitted, because no general law was applicable. In the present case, a complete system has been provided by a general law alike in its operations throughout a particular territory, and it cannot, therefore, be evaded by special legislation.

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[cc] Const. 1846, art. 3, § 18, added 1874.

[dd] People ex rel. Washington Park v. Banks.

Another vital defect in this bill is that it contains express provisions for the drainage of a certain specified district of which no mention is made in the title, as required by the sixteenth section of the third article of the Constitution. There are also other questionable features of the bill, which need not be specially mentioned in view of the objections already stated.

Earnest remonstrance has been made against the approval of the bill by property holders along the line of the proposed highway, owning about three-quarters of the frontage, while those favoring the bill own only about one-tenth of the property fronting on the line in question. The bill is also favored by many parties owning property within the assessment district but not immediately adjoining the parkway.''

The bill was not passed over the veto.

July 4. To the Senate:

**Veto of a bill entitled "An act to organize and establish a State Industrial School."**

''A voluminous catalogue would be required to enumerate the mistakes heretofore made by the State in founding different institutions. Too much care cannot be observed to avoid a repetition of such errors. The present Legislature has already committed the State to the establishment of two new retreats, and until the demand for appropriations to complete enterprises already undertaken shall be considerably reduced, great caution should govern the inauguration of others.

Fully appreciating the importance of providing all necessary facilities for the education and elevation of idle and truant children, it is my judgment that the subject should be approached with especial deliberation in order that the wisest and most appropriate action may be determined. A State institution in its very beginning necessarily involves considerable expenditure and annual appropriations are a legitimate consequence thereafter for maintenance. Before such liability shall be incurred, the whole question should be submitted to a proper commission for investigation and report to a future Legislature for more mature consideration. Even if such course result in the passage of this same measure another year, it will be better than to run any risk of erroneous and hasty action at this time.

The bill was not passed over the veto.

July 4. To the Assembly:

**Veto of a bill entitled "An act requiring the commissioners of fisheries of the State of New York, to construct suitable buildings in Jefferson county, to hatch and rear fish, to increase and maintain the stock and supply of certain varieties thereof in Lake Ontario and the St. Lawrence River, and making an appropriation therefor."**

"During the past twelve years the State of New York has expended more than one hundred and seventy thousand dollars ($170,000) for the purpose of replenishing the lakes and rivers of the State with fish. An establishment for their propagation, located near Rochester, is kept and maintained at the public expense; and from this hatchery young fish are shipped to all parts of the State for restocking depleted and destitute waters. It is obvious that this work can be conducted at one place to much better advantage than when located at two or more distant points; while transportation would be quite as advantageous from one station as from several.

The accompanying bill proposes that the Commissioners of Fisheries shall construct suitable buildings, with the necessary fixtures and ponds in Jefferson county, for the purpose of hatching and raising the principal varieties of fish that frequent the waters of Lake Ontario and St. Lawrence river, and appropriates $3,000 for that purpose. It is difficult to realize what possible benefit the State would enjoy, resulting from such expenditure, to which it is manifest considerable cost for maintenance would be added hereafter. If the proposition is made for the advantage of Jefferson County, what is to be done, it may be asked, when St. Lawrence, Oswego, Niagara and other counties ask for similar accommodations and privileges? It can hardly be denied that any of these counties has as much right to like consideration and favor as the county of Jefferson; and none will doubt the utter impracticability of locating a hatchery in every county of the State.''

The bill was not passed over the veto.

July 5. To the Senate:

**Veto of a bill entitled "An act to legitimize the birth of Robert John Ehlers."**

'' It is pertinent to consider first the propriety of putting a law of this kind on our statute books. To declare in legal form the birth of any person, born out of wedlock, shall be legitimized is an assumption degrading to law and void of compensating benefits. Besides making public the illegitimacy of a person that might not otherwise have been disclosed, it tends likewise to depreciate the force and dignity of legal enactment designed primarily to promote virtue and order and suppress the evils of discord and immorality. To legalize a birth occurring without the ordinances of divine or human law, does not wipe out the natural stain. The advantage sought by such method could better be reached by other means.

Aside from these general considerations there are reasons why this particular measure should not become a law. In one affidavit accompanying the petition upon which the bill is based the reputed father swears that he 'was a resident of the State of New York from 1848 to 1858, when he left the United States to carry on business as a merchant in the city of St. Petersburgh,' Russia. In another affidavit the same person swears that he was naturalized as an American citizen in the district court of Clinton county on the 29th day of December, 1857. From these representations it is made to appear that the petitioner became a naturalized citizen of the United States in Iowa, during the time when he is said to have resided in New York. The conflict of such statements is at least unfortunate, if not positively damaging.

The petitioner represents that the child was born in St. Petersburgh, January 14, 1866, and that the parents were married in the same city, January 26, 1869, (as evidenced by a marriage certificate of the pastor of St. Peter's church, in St. Petersburgh, dated November 25, 1877). It appears, therefore, that although Ehlers may have been at one time an alien resident of New York, it is extremely doubtful if he was ever a citizen of the State; and even if he was, he has been a non-resident for more than twenty years past. From all of which circumstances it seems manifestly improper to permit this bill to become a law, especially as careful examination of the laws of the State fail to disclose any legislation of an analogous character."

The bill was not passed over the veto.

July 5. To the Senate:

**Veto of a bill entitled "An act to provide a further supply of pure and wholesome water for the city of New York."**

"Although stated in very general terms, the particular object of this bill is to authorize the construction of an additional aqueduct for the conveyance of water from the Croton dam to the city of New York. The engineers of the Croton water bureau frankly state that the purpose is to construct a new and independent aqueduct of more than double the capacity of the present one, while no very definite statement has been made as to the anticipated cost of the new work. The engineers admit a probable cost of at least $2,000,000. Controller Campbell, who is a practical engineer of large experience and eminent character, and who has just served a term of five years as commissioner of public works, expresses the opinion that the proposed work will cost at least $15,000,000. Other persons, less familiar, perhaps, with the subject, believe that even a much larger sum will be required to complete the enterprise. Confessedly, therefore, the bill under consideration must be treated as a proposition to increase very largely the permanent debt of the city for the purpose set forth. The public debt of the city of New York, exclusive of the accumulated sinking fund, amounts at the present time to about $100,000,000, with a net annual interest charge of nearly $7,000,000. The process by which a large proportion of this colossal debt was created forms a chapter in the history of municipal government replete with scandal and reproach not only to the city and State of New York, but to American civilization as well. Beyond all comparison it is the blackest stain upon the integrity of human government of which we have any record. No enlargement of this great debt should be permitted except under the most pressing and unavoidable necessity. On the contrary, every possible effort should be exerted to reduce and extinguish it as speedily as practicable. This is demanded as a vital condition to the growth and continued supremacy of our great metropolis, whose burden of municipal taxation more than all else endangers and retards her prosperous development.

What, then, is the emergency to meet which it is now proposed to augment the present liability of the city? It is alleged that an additional supply of water is imperatively needed, and this, too, when ninety-three gallons *per capita* are daily furnished. Nobody will pretend that any community can properly use one-half of that amount. The only inference to be reasonably deduced is that a large proportion of this great volume of water is worse than wasted. Were it a simple waste, comparatively little harm might result from it, but, unfortunately, more serious consequences follow in the breeding of disease by the dissemination of poison. Many of the more fatal maladies developed of late years are attributed by the medical profession to causes having their origin in the abuse of the modern facilities for water supply. Probably the most forcible illustration of the needless waste of water and its practicable remedy may be drawn from the experience of the city of Liverpool. Ten years ago that city was threatened with a water famine. The supply had become so meagre that the people could only obtain water at certain hours each day. Intelligent and well-directed efforts were undertaken to stop unnecessary waste, which resulted within a few months, without increasing the supply a single gallon, in converting a deficient and inadequate flow of water into an ample and even superabundant quantity. Liverpool contains a population of about 700,000 souls, substantially two-thirds of that of New York city. The total cost of the improvement which worked such a marvellous change in the water system of that city was less than a quarter of a million of dollars. The same plan applied in several other cities of England has produced similar results. Hence it cannot be doubted that equal benefit would be derived from like efforts here.

Liverpool has now abundant water in a daily supply of about 20 gallons *per capita.* What possible excuse can there be, therefore, for a scarcity in New York with 93,000,000 gallons delivered every twenty-four hours through the Croton aqueduct. In the light of such experience as that related, may it not be wiser and safer to have the necessity of an increase more thoroughly demonstrated before the proposed work is undertaken at the enormous cost inevitably involved in the construction of an additional aqueduct from the Croton river to the city? When once begun every dollar invested in the work will be of no value until the entire structure shall have been completed and brought into use. It is of the greatest importance, then, that no mistake be made as to the absolute and unquestioned need of this extraordinary project.

In the event, however, of satisfactory proof of an indispensable necessity for a new aqueduct, some consideration must be given to the financial aspect of the case. The Constitution says: 'It shall be the duty of the Legislature to provide for the incorporation of cities and villages and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments and in contracting debt by such municipal corporations.'[ee] In the face of this imperative injunction, the Legislature has provided in the accompanying bill for an increase in the permanent debt of the city of New York, limited only as in the judgment and pleasure of the commissioner of public works may seem best. True, the board of estimate and apportionment is given certain concurrent authority as to the approval of contracts and purchase of real estate, but the power granted is really of a negative character. The commissioner of public works is vested, indeed, with immense and arbitrary powers, independent wholly of any other authority save only the incidental concurrence of the board of estimate and apportionment referred to. Instead, therefore, of observing the positive command of the Constitution to restrict the city of New York in contracting indebtedness, the Legislature would by this bill place it within the power of one single official to increase the permanent debt thereof to whatever sum he might see fit. In the words of the bill, 'the controller of the city of New York is hereby authorized and directed, upon the requisition of the commissioner of public works, to raise from time to time, on bonds of said city, in addition to the amounts which he is now authorized to raise for such purposes, such sums of money as shall be sufficient to pay for any real estate, with all expenses in surveying, locating and acquiring title thereto, and to pay for furnishing and laying pipes and constructing aqueducts, reservoirs, dams, sluices, canals, pumping works, and other appliances and appurtenances, and for surveying, locating, preparing plans and estimates, and for supervision of the construction thereof.' Can it be doubted that such unchecked authority for enlarging the debt of the city would be violative of the constitutional restrictions cited? Manifestly any legislative authority for increasing municipal indebtedness must be appropriately exercised in accordance with this prudential clause of the organic law of the State.

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[ee] Const. 1846, art. 8, § 9.

The wisdom of the proposition to burden the commissioner of public works with the vast responsibilities created by the accompanying bill may well be doubted. That officer is already charged with duties whose faithful and intelligent performance must necessarily tax the ability and resources of any man. He now directs the expenditure of $3,000,000 annually in the conduct of the ordinary affairs pertaining to the department committed to his management. To impose the additional requirements contemplated upon an officer sufficiently occupied with important labors is more than reason and a proper sense of official responsibility can possibly justify. No private undertaking or corporate trust of like magnitude would be thus reposed in a single individual. Even with large experience in public matters one might well hesitate to assume the direction of such enormous and difficult affairs, and there is certainly no good reason apparent why any doubtful experiment should be undertaken at this time. Measured by the probable outlay that would follow the enactment of this measure, it will easily rank in importance with the original Croton water enterprise, or the Erie canal as finally enlarged. Yet, with all its possible importance, the community directly interested has given the subject no consideration commensurate with its magnitude. Judging from letters recently received by me from some of the most intelligent and public spirited citizens of New York, it is evident that the scope of this bill is not adequately understood or appreciated by the people at large. Only last year Commissioner Campbell opposed the creation of a commission to inquire into the necessity of a new aqueduct on the ground that such a work would not be needed for several years. In that connection he said: 'In twelve or fifteen years, if the affairs and finances of the city are wisely, economically and honestly conducted, the debt will be reduced by the operation of the sinking fund nearly $50,000,000, and then, should it be found necessary to construct a new aqueduct of large dimensions from the Croton basin, the city will be able to meet the expense with a reduced debt and a lighter taxation from the increased value of taxable property.' The Union League Club, which embraces a large membership of the most intelligent and influential citizens, in a recent memorial on the subject says: 'It is clear from Commissioner Campbell's statement, that there is no immediate necessity for the construction of a new aqueduct from the Croton Valley. The additional supply from the Bronx river, amounting to 18,000,000 or 20,000,000 gallons *per diem,* and the measures for the suppression of waste render it safe to defer the construction of a new aqueduct until the question can be deliberately examined by commissioners and fully presented to the taxpayers of the city and at the ensuing session of the Legislature.' This expression undoubtedly represents the views and opinions of independent citizens having only the welfare of the city at heart.

Another Legislature will enter upon its duties within six months from this date, when the subject can be resumed and prosecuted to a wise and useful conclusion. Certainly no serious harm can result from the brief postponement which this course will involve. If the project shall then commend itself to the judgment of the Legislature it will be far more likely to secure the approval of the constituency immediately interested than would follow upon any present action. An enterprise of such proportions should not be undertaken until its merits are thoroughly appreciated and acknowledged."

The bill was not passed over the veto.

July 5. To the Assembly:

**Veto of a bill entitled "An act for the further protection of private property, and to repeal chapter 262 of the Laws of 1874,, entitled 'An act for the further protection of private property.'"**

"This bill proposes to make it a misdemeanor for any person to put, paste or post any written or printed matter upon any bill-board, fence, house or building of any kind without the permission of the owner or person entitled to the possession or use of the same. Thus, whoever within the broad domain of this State shall chance to pin up a notice for a school meeting, a religious or temperance meeting, or other proper assemblage of people, without first obtaining the consent of the owner or occupant of the building or fence upon which the notice is placed, will commit a misdemeanor. Such a law would lead to endless and useless trouble throughout the rural districts of the State. However proper and beneficial it might be within cities and villages, there is nothing to justify its application generally.

Even if the operations of the proposed law were limited to certain specified sections of the State, the penalties named are altogether beyond reason when considered in connection with the character of the offense. They are out of all proportion to the grade of punishment provided for other misdemeanors similar in degree. Manifestly, therefore, the bill provides for cruel and unusual punishment, and for that reason is repugnant to the fourth (fifth) section of the first article of the Constitution."

The bill was not passed over the veto.

July 6. To the Assembly:

**Veto of a bill entitled "An act to provide a salary for the aldermen of Long Island City."**

"The proposition embraced in this bill to provide a salary for the aldermen of Long Island City does not commend itself to my judgment. In the earlier days of the State, offices of this character were regarded as honorary trusts, for which no direct fee or reward was provided or desired. The satisfaction of earning the commendation of neighbors for whose benefit services were rendered was considered ample compensation. In numerous instances political and public careers of great distinction have commenced in positions of this description. Especially for young men, ambitious of gaining the good opinion of the communities in which they reside, there is no more desirable position than that of a member of the board of local authority. The practice in later years to make salaried offices of minor representative positions has unquestionably tended to lessen the honorable estimation in which they were formerly held. Nothing in the nature of aldermanic duties renders a return in the shape of salary either necessary or desirable. The services exacted are not such as to require absence from home or any particular neglect of business. As a general rule the amount of time demanded for the proper discharge of official duties is not sufficient to cause embarrassment, the time for meetings being usually arranged so as to cause as little inconvenience as possible.

There are, moreover, special objections to the accompanying bill, which are believed to be worthy of consideration. These apply with especial force to the financial condition of Long Island City, which has for a time been anything but satisfactory. For some reason, whether from improvident management or other cause, it is quite immaterial now to consider, the rate of taxation has for several years been so high as to render the collection of taxes exceedingly difficult, which has sensibly affected the financial credit of the city. Property has been greatly depreciated, and the market value of some of the city securities held at considerable discount. It is understood, however, that measures of retrenchment have lately been inaugurated, giving promise of improvement in respect to fiscal matters. In view of all these circumstances the present does not seem to be a propitious time to authorize an increased expenditure, especially for the purpose specified. Even should it be thought wise to provide compensation for aldermen eventually, the proposition should certainly await more favorable conditions than now exist."

The bill was not passed over the veto.

July 8. To the Senate:

**Veto of a bill entitled "An act to release the interest and title of the people of the State of New York, in and to certain real estate in the town of Owego, in the county of Tioga, to Joseph DeGroat."**

"Existing laws provide that upon the filing certain releases to the State, the owners of lands abutting upon the abandoned Chenango canal extension shall thereupon be vested with the ownership of one-half of the canal lying in front of their premises. This bill proposes to release to Joseph D. DeGroat the other half of the canal opposite his premises, and also a strip of land lying between the canal and the Susquehanna river. The construction of a new railroad along the line of the canal renders this strip of land of some special value, and the supposition is that the title is sought in order that it may be sold to the railroad company. Inasmuch as Mr. De Groat purchased his property since the canal was located, he has no claim whatever to the release it is proposed to grant. If there is any value in the piece of land sought to be acquired it should be realized and applied to reimburse the State, in however small degree, for its original cost. Were this release granted, it would form a precedent for the claim of other parties in similar cases along the entire line of the canal, especially where no other property happened to be located between the canal and the Susquehanna river. If a release is granted in this instance, no good reason would exist why other claimants should not be treated in the same manner."

The bill was not passed over the veto.

July 8. To the Senate:

**Veto of a bill entitled "An act to provide for the payment to John Foley of his salary as supervisor of the county of New York."**

"By the provisions of this bill the Comptroller of the city of New York is required to pay John Foley the salary of a supervisor of the county of New York from 1869 to the first of January, 1874, together with interest on the same to date of payment. The board of supervisors, of which Mr. Foley claims to have been a member, was abolished on the first Monday of July, 1870, by the operation of chapter 190 of the Laws of that year, and the powers and duties which previously devolved upon the board were by the same act transferred to and vested in a board of supervisors composed of the mayor, recorder and aldermen of the city of New York, as thereby created.

From and after the first Monday in July, 1870, this new board performed all the duties pertaining to the board of supervisors of the county of New York, and was the only recognized board subsequent to that date until 1874. It is, therefore, difficult to see what possible claim Mr. Foley can have for compensation as a member of the old board after the date of its abolition. If, however, the liability were admitted or established in favor of this claimant, every other member of the same board has the same right to claim compensation for the remaining portion of the terms for which they were elected. The city of New York has always been responsible for the payment of all legal claims for services, and ample laws for the enforcement of such claims have been in existence. If Mr. Foley neglected to avail himself of the means available to collect his demand, the fault must rest entirely with himself. Under the operation of the laws of the State, his claim against the city is now barred by the lapse of time. The Constitution expressly prohibits the Legislature and all other authorities acting on behalf of the State, from auditing, allowing or paying any claim, which as between citizens of the State would be barred by existing statutes.[rr] Certainly the Legislature cannot be justified in vitalizing a claim against a municipal corporation, which as made against the State under similar circumstances, would be barred by the Constitution."

The bill was not passed over the veto.

July 8. To the Assembly:

**Veto of a bill entitled "An act to amend an act entitled 'An act for the incorporation of villages,' so far as it relates to the village of Dresden, in the county of Yates, passed April 20, 1870."**

"Affairs of villages have long afforded a prolific subject for legislation, and repeated efforts have been made to establish such general system as to obviate the necessity or demand for special enactments relative to the same. As long ago as 1847, a general law was passed for the incorporation of villages, which was superseded by a more comprehensive act in 1870. Pursuant to these laws, many villages of the State have been incorporated, and are now governed. Constantly increasing pressure for local legislation in regard to such incorporations finally resulted in the adoption of the constitutional amendment, which took effect in 1874, prohibiting the Legislature from passing local bills in certain enumerated cases, including the incorporation of villages.[ss] The obvious intent of this restriction was to fix a stable and uniform rule, as far as practicable, and thereby render special legislation unnecessary. Any action, therefore, disregarding such policy must be considered as antagonistic to the organic law of the State.

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[rr] Const. 1846, art. 7, § 14, added 1874.

The accompanying bill proposes to amend the general law for the incorporation of villages, chapter 291 of the Laws of 1870, so far as it relates to the village of Dresden, in the county of Yates. If this proposition were acceded to, every other village in the State would have equal right and privilege to apply for amendments to the general law to suit their particular views and convenience. It would be absolutely impossible in such case to make reasonable discrimination, and the object of the constitutional provision would thus prove entirely abortive. There are at the present time 321 incorporated villages in the State, and the number is yearly increasing. A very large proportion of these are incorporated under the general law, and if it is conceded that this may be amended to accommodate each separate community, then it must be admitted that the Constitution in that regard has failed to prevent special legislation. If it be impracticable to provide general laws for the efficient and satisfactory government of villages, the sooner that fact is demonstrated the better, perhaps, it will be for all concerned. But the best way to determine the matter is to hold the question to a thoroughly practical test."

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[ss] Const. 1846, art. 3, § 18, added 1874.

The bill was not passed over the veto.

July 8. To the Assembly:

**Veto of a bill entitled "An act to amend chapter 49 of the Laws of 1878, entitled 'An act in relation to noxious weeds and brush in public highways.'"**

"If explanation of the frequent violations of law be sought, it may be found, in part, perhaps, in the needless multiplication of unimportant statutes enacted every year by the Legislature. The accompanying bill is a striking illustration of this proposition. It decrees that coal ashes, rubbish or refuse of any kind shall not be placed within the limits of any highway; except that coal ashes may be used for the improvement of sidewalks and highways with the consent of the highway or street commissioner. In all cities and villages this subject is regulated by local ordinance, hence general legislation is quite unnecessary for the protection of streets or highways therein. In the country districts such a law would unquestionably prove a dead letter, and, while thus inoperative, it would be constantly violated through ignorance, in most cases, of its existence. If any effect were produced, it would be most likely to furnish the cause of neighborhood quarrels. While giving no promise of an improved condition of the highways, it would, in all probability, if appealed to at all, be only to gratify personal malice against those who unwittingly disregarded its warnings.

To prohibit the use of coal ashes for the improvement of sidewalks and highways, except by the consent of the commissioner in charge, would be found not always desirable. Frequently this material may be the very best available for needed improvements, and its use should be encouraged rather than prohibited. Persons willing to improve either sidewalks or highways ought not to be obliged always to obtain the permission of a highway commissioner before proceeding to execute a praiseworthy purpose.

Another objection to this bill is that it introduces into an existing law an amendment not strictly pertinent to its title, thereby obscuring the provisions of this act from the publicity which should be given to all laws."

The bill was not passed over the veto.

July 12. To the Assembly:

**Veto of an item in the bill entitled "An act making an appropriation to pay certain expenses of the Legislature."**

"By the terms of this bill it is proposed to authorize payment for 'the services of all counsel appearing before the committee of investigation.' In case a legislative committee engages the services of counsel for the benefit of the State, it is eminently proper that suitable compensation should be made. The appearance of counsel before committees, in behalf of private parties interested in the subject under consideration, is a matter of every day occurrence; but a proposition that counsel thus appearing should be paid by the State is quite unprecedented, and it can hardly be supposed that the Legislature intended to make such provision. An effort has, therefore, been made to confer with the author of the bill with a view to its amendment; but this has proved ineffectual; and, as the time in which the bill might have been withdrawn has expired, no remedy now remains but to return it with the objection stated, which may be met and obviated in another bill should that course be deemed advisable."

The item was not passed over the veto.

July 12. To the Assembly:

**Veto of a bill entitled "An act to prevent fraud in the manufacture and sale of sugars, syrups, molasses and honey."**

"It is evident that this bill, in its present form, has a different meaning, and, if approved, would have quite a contrary effect, from what was intended by the legislature. The first section provides that sugars, syrups, molasses or honey, containing any mixture of grape sugar or certain other articles, shall be marked by the manufacturers as 'mixed sugars,' etc. Section two requires that such mixed articles shall be offered and sold as 'adulterated,' and that they shall be exposed and sold from the original packages marked as provided in the first section. The third section makes all violations of the proposed act misdemeanors, and provides certain penalties for their punishment. It is apparent, therefore, that any failure to make representation, at the time of offering the articles for sale, that they are adulterated, would be a misdemeanor. Inasmuch as the manufacturer is simply required to brand the sugars as 'mixed,' it would seem to be a hardship to require the merchant to represent them as adulterated, and if, by inadvertence or otherwise, he should neglect so to do, the omission would be a punishable offense.

Unquestionably, the goods should be offered and sold in accordance with the fact as to their character. If the manufacturer shall be required to brand them as 'mixed,' why should not the merchant be permitted to sell them as such? Otherwise it would almost inevitably follow that the law would be constantly, though unintentionally, violated by persons ignorant of the technical provisions of the act. It is fair to assume that the multitude of persons who deal in sugars could hardly be made familiar with the details of such a law, and it would be manifestly unjust to expose them to the dangers of its violation. While affording no valuable protection to the consumers, the proposed act would offer constant opportunity for malicious persons to take advantage of technical offenses, unwittingly committed, which would lead to needless trouble and annoyance.

The Legislature has already enacted a law to prevent the adulteration of food and drugs, being chapter 407 of the Laws of 1881, which is believed to be fully adequate to accomplish all that is designed by the accompanying bill. It would be quite unnecessary, therefore, to permit this bill to become a law, even were it free from the objections stated. The general law is extremely comprehensive in its provisions, and very similar to, if not identical with, laws of several other States, having been framed after English laws of recent enactment. The subject of preventing the adulteration of food and medicine has within recent years received much attention from intelligent persons, and considerable progress has already been made to promote this desirable object. In view of the effort now in progress to secure uniform legislation in the different States and from Congress, on the general subject of adulteration, it is believed wiser to postpone for the present further action than has already been adopted."

The bill was not passed over the veto.

July 12. To the Assembly:

**Veto of a bill entitled "An act to amend section 2509 of the Code of Civil Procedure."**

"This is a proposition to amend the Code of Civil Procedure by inserting therein a provision requiring the supervisors of each county to fix the compensation of surrogates' clerks at not less than $200 per annum. Boards of supervisors already have power to fix the compensation of these clerks as well as that of other county officers, when not otherwise regulated by law. The only effect of this amendment, consequently, is to establish a minimum limit to the amount authorized to be paid. If the object were to fix a maximum sum for such purpose, it would be justified as guarding against extravagant expenditure; but in this case the sole effect appears to be to check the exercise of economy on the part of supervisors. No public necessity is believed to exist for abridging the power of supervisors to direct a frugal administration of affairs within their jurisdiction; while such interference as now proposed would almost inevitably establish a precedent for subsequent action derogatory to the public welfare."

The bill was not passed over the veto.

July 12. To the Assembly:

**Veto of a bill entitled "An act to facilitate travel on the public highways in Franklin County."**

"For the better protection of the highways, and to facilitate travel thereon, it is proposed by this bill to authorize and require the commissioners of highways in the several towns of Franklin county to remove or lay down all fences along any public highway running north and south, except stone walls, between October and April of each year. Numerous objections could be suggested to the provisions of the bill in detail; but these need not be discussed in view of the general and more prominent one, that legislation of this character should not be enacted by local bill. If the subject requires legislation in any form, sufficient authority should be conferred upon boards of supervisors to deal with it as occasion may require, according to the necessities of different localities."

The bill was not passed over the veto.

July 13. To the Senate:

**Veto of a bill entitled "An act to authorize and direct the board of supervisors of Kings County to make suitable provision to reimburse Moses Kessel for all legitimate costs, counsel fees and expenses incurred by him in and about a certain action of quo warranto brought against him by the people of the State of New York on the relation of Andrew Zeiser to oust said Moses Kessel from a certain office in the county of Kings known and designated as 'commissioner of charities in the county of Kings.'"**

"Several measures similar in character to this bill have been returned without approval during the present Legislature. The objections presented in the respective cases apply with equal force to the bill now under consideration. If the policy of reimbursing public officers for expenses incurred in defending their title to office be established, a burden of large magnitude will be put upon the people. In this case the claimant, who had received a certificate of election, was ousted by the Supreme Court in an action on *quo warranto,* instituted at the instance of his competitor, who was awarded the office. Subsequently the General Term reversed the judgment of the court under a ruling of the Court of Appeals in a case supposed to be analogous in character.[hh] At this point of the controversy the term of office in question had so nearly expired that no interest remained to render further contest worth while.

It is maintained, however, by able counsel representing the adverse party that a review of the case by the Court of Appeals would necessarily have resulted in the final defeat of this claimant. It has been claimed in support of this bill that laws of like character have been enacted in past years. If mistaken policy has heretofore prevailed, it should not be appealed to as a precedent to excuse other wrongful acts. On the contrary, if errors have been committed in the past, it is the very best reason that a repetition should not occur. In the present case reimbursements would be purely a gratuity, in which there is neither equity nor justice. The constitutional prohibition against city or county giving money or property to individuals must be regarded as an absolute bar to the enactment of such measures as this.''[11]

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[hh] People ex rel. Zeiser v. Kessell (1880), 21 Hun, 277; 81 N. Y. 638.

The bill was not passed over the veto.

July 14. To the Senate:

**Veto of a bill entitled "An act making an appropriation for continuing the work on the exterior walls of the new capitol."**

'' The erection of the New Capitol was commenced under a law providing that the commissioners should not proceed with the work of construction until they were satisfied that the building could be completed in conformity with the plans already adopted, at a cost not to exceed four million dollars. Carefully prepared estimates were furnished by the architect, and revised by the State Engineer and Surveyor, demonstrating that this important condition could be complied with; whereupon, the commissioners resolved to proceed with the work intrusted to their direction. Actual experience, however, proved that the calculations were not trustworthy, and that every portion of the work cost more than the estimates provided, until down to the present time more than twelve million dollars have been expended, with the edifice yet very far from completion. Whether the great discrepancy between the original estimates and the results realized is to be accounted for by imperfect and insufficient estimates, or by impeaching the management of the work, it is, perhaps, impossible at this late day to determine.

It cannot be supposed that the New Capitol would have been authorized, had the people any realizing sense of its ultimate cost. When the enterprise was inaugurated the amount named as the limit of expenditure was regarded an ample sum for the purpose designated. The possibility of such extravagant outlay was never contemplated, nor even suspected, until millions of dollars had already been lavished upon the work. Only by slow degrees did the real magnitude of the probable total cost become manifest. Too late then to recall the investment already made, or materially reduce or modify the rate of expense established to finish the work, nothing remained but to make the best of the misfortune, and push the enterprise to completion as rapidly as prudence and propriety would justify. During much of the intervening time the taxpayers have been sorely pressed with burdens improvidently thrust upon them. In all the gloomy years of business depression the New Capitol has gone steadily forward. Its progress has never for a single year been interrupted. Liberal appropriations have been made by each successive Legislature, regardless often of strenuous opposition from the Executive. In order to provide for the completion of that portion of the building containing the apartments designed for the Senate, and the Executive department, the extraordinary sum of sixteen hundred thousand dollars was appropriated last year. The accommodations planned for the use of the principal departments of the government having been substantially completed, no exigency demands the prosecution of work on the remaining portions of the edifice faster than moderate appropriations will allow.

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[11] Const. 1846, art. 8, § 11, added 1874.

The present Legislature has heretofore appropriated one million dollars, which it is supposed will be ample to bring the entire front of the building into use. Hence the accompanying bill making an appropriation of five hundred thousand dollars more to continue the work does not supply any public necessity. Nothing in the condition of the building renders such a provision advantageous or desirable to the interests of the State. The commissioners in charge have made no recommendation of an additional expenditure for the current year; and there has been no expression of public sentiment that calls for greater progress than existing appropriations will abundantly meet. The annual tax levy has already been enacted to provide for expenditures heretofore authorized, and the financial officers have no prospective resources from which to satisfy the demands of this bill, except by pledging the credit of the State. Such proceeding could only be justified in the presence of a grave public emergency, which, fortunately, does not now exist.

If the supply of labor exceeded the general demand, the situation might be different, and other considerations would in that case properly influence the disposition of the question. An enlarged appropriation might thus be defended for the double purpose of furnishing employment for industrious men, and forwarding the work economically. But there is nothing in the present condition of affairs to warrant an increase of public expenditures for either of these objects. Labor is now in great demand, particularly for building purposes. Never, probably, in the history of the country was more building in progress than during the current year, and unprecedented activity prevails in almost every other branch of industry. With this favorable opportunity for obtaining employment the men who have been so generously sustained by the State during the years when their services were much less in request than now cannot reasonably ask or expect that untimely or extraordinary appropriations shall be made for their particular benefit, regardless of all other interests.

Differing so widely from the judgment of the Legislature in a matter of such magnitude is cause of sincere regret; yet, being convinced that neither sound policy nor public necessity will justify the enactment of this measure, no other course remains for me, in the conscientious discharge of official responsibility, than to return the bill without approval."

The bill was not passed over the veto.

July 14. To the Senate:

**Veto of a bill entitled "An act to amend chapter 479 of the laws of 1880, entitled 'An act for the better preservation of trees and shrubbery on the islands in Lake George.'"**

"The act of last year on this same subject makes it a misdemeanor for any person to 'willfully remove, hack, hew, cut, deface or otherwise injure any tree, shrub or bush now standing or growing on any of the islands in Lake George belonging to the State.' The amendment proposed by this bill is to substitute the word 'and' for 'or' where it occurs as shown by the foregoing quotation. The effect of this change would be to annul the prohibition so far as it relates to trees which are standing, but not growing. If the original enactment was justifiable, it is difficult to understand the propriety of the proposed change. Trees which have reached their maturity, and, therefore, not liable to be classified as growing trees, would be quite as likely to invite the attack of trespassers as the growing trees would; and probably more so. If a statute is necessary to protect one class it would seem to be quite as important for the protection of the other."

The bill was not passed over the veto.

July 14. To the Senate:

**Veto of a bill entitled "An act to authorize the improvement of the Riverside Park and certain other parks or places in the city of New York."**

"The commissioners of public parks of the city of New York are by this bill authorized and directed to proceed with the improvement and inclosure of Riverside Park and two other small parks adjacent to the Broadway boulevard. For this purpose the comptroller is required to borrow $100,000 to be repaid by taxation in 1882 and 1883. Several million dollars have already been expended in the construction of the Broadway boulevard and the Riverside improvement, both of which are beyond that region of improvement now occupied for either residences or business purposes. The wisdom of proceeding with additional expenditure on either of these works, in advance of the development of the property in the neighborhood, may well be questioned. In both cases the substantial work of grading, paving and sewerage has been completed. Nothing now remains to be done except the final embellishment of the parks which may very well await the approach of population and the occupation of contiguous districts. The comptroller of the city of New York opposes the enactment of the bill as unwise and unnecessary. He suggests that 'the necessity for proceeding with these improvements should be considered and determined by the city authorities who are familiar with the subject. Should it be deemed necessary to improve these parks and public places, the board of estimate and apportionment have authority to provide funds for the purpose. Special acts of this character interfere with the harmonious administration of city officers by weakening the responsibility of local boards and placing additional burdens upon the city without their approval.'

With such expression from the financial officer of the city, it is submitted that this measure should not be permitted to become a law."

The bill was not passed over the veto.

July 14. To the Assembly:

**Veto of a bill entitled "An act authorizing the commissioners of the land office to grant and convey the interest of the people of this State in and to lands sold for taxes."**

"This is a proposition to authorize the commissioners of the land office, in their discretion, to sell to the former owners, or their heirs or grantees, lands bought in by the Comptroller for taxes, upon payment into the treasury of the amount due the State, or such further sum as such commissioner shall deem just, not exceeding ten per cent of the amount due. The commissioners already possess, and are accustomed to exercise, all of the authority granted by this bill, except the proposed limit, which in many cases might prove grossly unjust to the State. Lands bought in by the Comptroller are not subject to taxation, hence the proposed terms would enable persons to surrender their lands to the State, to be carried free of taxation until they were ready to redeem, when the only compensation the State could receive in lieu of taxes would be the ten per cent advance. After the period of redemption has expired, the practice of the commissioners is to sell the lands upon appraisement, always giving to the former owners, or their representatives, the preference over other purchasers.

Much the greater proportion of lands sold for taxes is located in the region covered by the great northern wilderness. Throughout all that part of the State an appreciation in the value of land is constantly advancing, in consequence of the large and increasing influx of summer visitors. In cases where the State has carried parcels of land without taxation for a number of years, it should, at least, be made good for the amount of revenue thus lost. The limitation which the accompanying bill proposes would often deprive the State of the right to reimburse itself which it now enjoys. Neither good policy nor common justice will justify the enactment of a measure of this character."

The bill was not passed over the veto.

July 21. To the Senate:

**Veto of a bill entitled "An act in relation to changing the present grades and establishing new grades for certain streets in the city of New York."**

"The commissioner of public works of the city of New York is by this bill authorized, within six months, to change the present grades and establish new grades for the streets between Eighty-fourth and Ninety-sixth streets, and the Boulevard and the Hudson river. He is required to file a map showing the new grades, which shall thereupon become the lawful grades of the several streets embraced within the limits named. The second section of the bill provides that 'the commissioner of public works shall have power immediately thereafter to proceed to regulate, grade, curb and flag such streets in accordance with the grades so established.' Whatever necessity or justification there may be for changing the grades of the prospective streets is not apparent, but it is entirely clear that the commissioner should not be vested with this extraordinary power to open and work several miles of streets, regardless, perhaps, of the wishes of the owners of the property. For all ordinary purposes the general laws in reference to street openings in New York City are quite adequate and should be observed, unless in exceptional cases where it is demonstrated that special legislation is necessary to promote the public welfare.

It is also respectfully submitted that the title of the bill is not in conformity with the constitutional requirement with reference to local bills. The sixteenth section of article three of the Constitution provides that 'no private or local bill which may be passed by the Legislature shall embrace more than one subject, and that shall be expressed in the title.' Possibly this bill embraces what would be deemed 'one subject,' according to the meaning that phrase was intended to convey, but it is clear that the title does not express the object of the bill. Indeed, by far the most important part of the bill is not expressed in the title, while even that portion which is expressed seems too general and indefinite. The title contains not a word in regard to authorizing the commissioner to 'regulate, grade, curb and flag' the streets in question, and nothing from which such authority could be derived or inferred."

The bill was not passed over the veto.

July 21. To the Assembly:

**Veto of a bill entitled "An act to regulate the standard of illuminating oils and fluids for the better protection of life, health and property."**

" The bill provides that there shall not be manufactured or sold within this State, for illuminating or heating purposes, oil or burning fluid, which shall emit an inflammable vapor that will flash at a temperature below one hundred degrees Fahrenheit; and that no such substance which will ignite at a temperature below three hundred degrees shall be used or carried in any passenger or baggage car or passenger boat. It further provides for the appointment of a State inspector and not more than twenty-five deputy inspectors of illuminating oils; and that no oil or burning fluid shall be permitted to be sold within the State which shall not have been duly inspected and branded by the inspectors. Thus a complicated system of official machinery is to be created for the purpose of inspecting an article of merchandise in common use, whether the same come below the standard of prohibition or not. Oils that are perfectly safe are to be subjected to inspection the same as those that are dangerous on account of their explosive character.

The eighth section of article five of the Constitution declares 'all offices for the weighing, gauging, measuring, culling or inspecting of any merchandise, produce, manufacture or commodity whatever, are hereby abolished and no such office shall hereafter be created by law, but nothing in this section contained shall abrogate any office created for the purpose of protecting the public health' * * * There can be no doubt that this constitutional provision effectually prohibits the creation of any office for the inspection of any article of merchandise or manufacture which does not endanger the public health. It can hardly be maintained that safe oils must be inspected simply because unsafe oils are sometimes manufactured and offered for sale. To avoid the foregoing constitutional provision the inspection must of necessity be based upon the proviso in behalf of the public health. It seems clear, therefore, that the inspection of oils ought to be confined to such as are fairly presumed to be dangerous.

It is eminently proper that a safe standard of illuminating oils should be established by law; and the sale of such as do not conform to the standard should be prohibited under severe penalties. Beyond this a system of examination of dangerous oils might very properly be provided, with authority to make inspections in all cases where by allegation or otherwise reasonable suspicion as to the dangerous character of oils is entertained. Manufacturers should be required to brand their product according to its quality, and be held to rigid accountability therefor. If experience proved further precaution necessary, manufacturers within the State and agents for the sale of oils manufactured beyond its borders could be licensed and required to give bonds to guarantee the character of their respective products.

The system of inspection proposed by the accompanying bill would inevitably prove obnoxious to large numbers of persons who are now accustomed to deal in the articles in question. Even if this measure were free from doubt as to its constitutionality, there might be very serious question as to the wisdom of hampering trade with all the complicated details which the operation of the proposed law would entail. The true principle of government requires the utmost freedom from restraint consistent with good order and the safety of community. Care should be taken to avoid as far as possible the creation of new offices, more especially such as would be likely to give undue annoyance to the people."

The bill was not passed over the veto.

July 23. To the Senate:

**Veto of a bill entitled "An act for the relief of Babette Stemmler."**

"At the general election in 1869 one McGuire was declared elected justice of the Seventh District Court in the city of New York. He was awarded the certificate of election and entered upon the duties of the office, discharging the same during a period of more than three years. His election was contested in the courts by his competitor, Stemmler, who finally obtained judicial decision in his favor and succeeded to the office in 1873. The facts developed on the trial of the case clearly demonstrated the fraudulent character of McGuire's title to the office, and gross injustice was suffered by Stemmler in subjecting him to a prolonged and vexatious contest to establish his rights. In a suit to recover the salary, Stemmler secured a judgment against McGuire, but the latter proved irresponsible, and collection was found to be impossible. The object of this bill is to direct the comptroller of the city of New York to pay Stemmler's widow an amount equivalent to the salary which was paid to McGuire while acting as justice *de facto* from January 1, 1870, to July 31, 1873. If either a legal or equitable claim could be established against the city in this case it would be competent for the Legislature to grant the relief sought. Unfortunately, however, reimbursement in cases of this character can only be regarded as gratuities, and therefore repugnant to that article of the Constitution which prohibits the giving of the money or property of any county or city to an individual."[11]

The bill was not passed over the veto.

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[11] Const. 1846, art. 8, § 11, added 1874.

July 23. To the Senate:

**Veto of a bill entitled "An act to authorize aliens to purchase and hold real estate in this State."**

"This bill purposes to establish a new policy in regard to allowing aliens to acquire, hold and convey real estate within this State. Heretofore it has been deemed necessary to act upon each separate case by legislation, and a general rule has obtained, of granting a release as a matter of course, where title has come to the State by reason of the alienage of parties interested. It is now proposed that aliens to whom lands may have descended from any ancestor or may hereafter so descend or to whom lands may have been or may hereafter be devised shall have, hold and convey the same to all intents and purposes as any natural born citizens may do. The title of the bill also purposes to authorize aliens to purchase real estate, but such authority is not granted by the terms of the bill. This feature was contained in the printed bill but appears to have been stricken out by the Legislature in its consideration of the measure, without having corrected the form of the title.

It is manifest, therefore, that the Legislature deemed it unwise to grant the general privilege of allowing aliens to purchase lands. Assuming this to be its deliberate judgment, it is difficult to understand the policy of granting the limited authority contained in the bill; as it now stands certain advantages would doubtless follow the enactment of a law authorizing the purchase of lands by aliens, and these would have the effect to induce the investment of foreign capital. In cases where such purchases result in the improvement of property obvious benefits would accrue to the State; but where only the holding of property for speculative purposes should occur, the contrary effect would follow. It seems clear, however, that so long as this branch of the subject remains for legislation, as occasion may require, it is better that the whole question should continue at the disposal of the same authority."

The bill was not passed over the veto.

July 23. The Legislature adjourned without day.

## THIRTY-DAY BILLS.

July 26.

**Memorandum filed with Assembly bill, chapter 676, entitled "An act to establish the Penal Code."**[20]

"This bill reached the Executive Chamber on the last day but one of the legislative session; too late, therefore, to afford sufficient opportunity for an intelligent consideration of its provisions in detail, before the final adjournment. A careful examination since develops a number of objections to certain sections which evidently need amendment. Had the bill come to my attention in time to have received further consideration by the Legislature, these undesirable features would have been pointed out with a view to their correction. The only alternative now remaining is to approve the measure as a whole and trust to future legislation for the proper amendments, or to reject it entirely.

Inasmuch as the bill, if approved, will not take effect until May 1, 1882, ample time during the next legislative session will be available for the consideration and adoption of necessary and desirable amendments, before any of its provisions become operative. In general, the bill seems highly meritorious, and is warmly approved by the legal profession as supplying a want long felt in the administration of the criminal statutes. Considering the question in all its bearing, the wiser course appears to be in favor of the approval of the bill in its present form, depending on the next Legislature to perfect it in such manner as in their wisdom may seem best."

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[20] The session laws of 1882 contain several chapters amending the Penal Code.

August 23. The omnibus veto included the following bills:

Senate bill 338. An act to amend section 2 of chapter 405 of the Laws of 1879, entitled "An act to amend sections 2 and 10 of chapter 248 of the Laws of 1878, entitled 'An act in relation to the election of officers in certain school districts.'"

Senate bill 354. An act to amend chapter 267 of the Laws of 1875, entitled "An act for the incorporation of societies or clubs for certain lawful purposes."

Assembly bill. An act to amend chapter 426 of the Laws of 1847 relating to villages so far as applicable to the village of Clayton, Jefferson county.

Senate bill 304. An act to divide the city of Yonkers into seven wards, and to provide for the election of aldermen therein.

Assembly bill 339. An act to authorize Henry F. Chadeayne to establish and continue a ferry across the Hudson river from Cornwall Landing, in the county of Orange, to the opposite side of the river.

Assembly bill 430. An act to amend an act entitled "An act in relation to the assessment for the repavement of Atlantic avenue with granite pavement, in the city of Brooklyn," passed May 23, 1878, being chapter 366.

Assembly bill 781. An act for the better laying out and improving of that portion of the city of New York east of avenue St. Nicholas and Kingsbridge road, and west of the Harlem river from 155th to 175th street.

Assembly bill. An act authorizing the re-assessment of certain rejected taxes in the counties of Herkimer and Lewis.

Senate bill 405. An act to amend chapter 518 of the laws of 1879, entitled "An act for the better laying out and improving of that portion of the city of New York between 145th and 155th streets, and west of Eighth avenue."

Senate bill 410. An act for the better laying out and improvement of that portion of the city of New York between 145th street, Avenue St. Nicholas, the lands of the Sacred Heart and Tenth Avenue.

Senate bill 34. An act to authorize the construction of a bridge over the Erie canal at Tonawanda.

Senate bill 350. An act in relation to a claim of Henry R. Low against the State of New York for moneys advanced or liability incurred for the benefit of the State Homeopathic Asylum for the Insane at Middletown, N. Y.

Senate bill 44. An act to amend the Code of Civil Procedure, sec. 403.

Senate bill 299. An act to amend the Code of Civil Procedure, sec. 3229.

Senate bill 8. An act to amend an act entitled "An act supplemental to the Code of Civil Procedure," and to repeal certain acts superseded thereby."

Assembly bill 403. An act to amend chapter 486 of the laws of 1880, entitled "An act to secure the payment of mechanics, laborers and workmen who perform work, also persons furnishing materials towards the erection, altering or repairing buildings, wharves, vaults or other structure in the cities of the State of New York."

Assembly bill 47. An act in relation to foreign wills.

Assembly bill. An act to amend chapter 92, Laws of 1880, entitled "An act in relation to common lands of the town of Gravesend."

Assembly bill. An act to provide for the grading of certain portions of Ninth street and Garnet street in the city of Brooklyn.

Assembly bill 783. An act to amend chapter 579, Laws of

1880, relating to the opening of streets, avenues, etc., in the city of New York.

Assembly bill 372. An act to amend section 6, chap. 486, Laws of 1880, entitled "An act to secure the payment of mechanics in the cities of the State of New York."

Senate bill. An act for the relief of William Henry Barlow.

Senate bill. An act making an appropriation for the payment of interest on award of the Canal Appraisers in favor of Joseph Miser, Jr.

Senate bill 283. An act for the preservation of public records in the State of New York.

Senate bill 99. An act to amend chapter 519, Laws of 1870, "to revise the charter of the city of Buffalo."

Senate bill 303. An act to widen East One Hundreth street from Third avenue to the Harlem river in the city of New York.

Senate bill. An act to amend chapter 344, Laws of 1880, entitled "An act to establish a local court of civil jurisdiction in the city of Buffalo and to amend the charter of said city."

Senate bill. An act to provide for the equalization of assessments and taxation in certain cases.

Senate bill. An act in relation to medical services performed in Auburn prison, and authorizing the State Board of Audit to determine the claim therefor.

Senate bill. An act to authorize the State Board of Audit to hear and determine the claims of certain contractors with the State for money deposited by them with the Treasurer.

Senate bill. An act to amend chap. 519, laws of 1870, entitled "An act to revise the charter of the city of Buffalo."

Assembly bill 696. An act to amend an act, etc., in relation to the imprisonment of convicts in the Elmira Reformatory.

## VETO OF TEN-DAY BILLS.

The Delaware and Ulster Plank road bill and the bill changing the title of the Bankers' Life Insurance and Trust Company of New York were vetoed on the same day, *ante,* pp. 565, 567. The vetoes were dated May 16, but were not delivered until the 17th.

Both bills were delivered to the Governor on the 4th of May. Under the Constitution he had ten days for their consideration, excluding Sundays.[kk] According to the calendar, the 4th of May was on Wednesday, therefore the tenth secular day was Monday, the 16th. The Constitution then required, and still requires, a bill to be returned "within" ten days, Sundays excepted. The vetoes not having been received by the Legislature until the 17th, a question arose as to the status of the bills. On the 10th of June the Senate adopted a resolution declaring that the Bankers' bill had become a law by reason of the failure of the Governor to return it within the time prescribed by the Constitution, and directing the clerk of the Senate to deliver the bill to the Secretary of State with a copy of the resolution.

On the 11th of June the Secretary of State requested the opinion of the Attorney General as to the status of the Bankers' bill. The following is the Attorney General's opinion:

STATE OF NEW YORK:

OFFICE OF THE ATTORNEY GENERAL,
ALBANY, *June* 20, 1881.

Hon. JOSEPH B. CARR, Secretary of State:

DEAR SIR.—I have the honor to acknowledge the receipt of your communication of the 11th inst., requesting the opinion of the attorney-general whether senate bill number 216, entitled 'An act to change the corporate title of the

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[kk] Const. 1846. art. 4, § 9, am. 1874.

Bankers' Life Insurance and Trust Company of New York to the Bankers' Loan and Trust Company of New York,' has, under the circumstances stated by you, become a law.

The material facts stated are as follows: On the 4th day of May, 1881, said bill, having been duly passed by both houses of the Legislature, was delivered to his excellency, the governor, at the executive chamber, for his action thereon. The legislature adjourned on Friday, May 13th, until Monday evening, May 16th, at 8 o'clock. On Monday evening, May 16th, the governor sent said bill, with his objections thereto, by his private secretary, for delivery to the senate, the house in which said bill originated; but the private secretary did not deliver said bill with the objections thereto, to the senate, for the reason that, on his arrival in the senate chamber, the senate had just suddenly adjourned immediately after the opening prayer, before the transaction of any business or the reading of the daily journal, to May 17th. The bill, with the message vetoing the same, was delivered to the senate, by said private secretary, on Tuesday morning, May 17th, that being the eleventh day, Sundays excepted, after said bill had been presented to the governor. The Senate retained the bill until June 10th inst., on which day, pursuant to a resolution of that body, it was transmitted to the office of the Secretary of State, with a copy of said resolution.

The question whether this bill, under these circumstances, has become a law without the governor's approval, depends upon the proper interpretation to be given to the second one of the two following clauses, in article four, section nine of the constitution of this State, viz.:

'Every bill which shall have passed the senate and assembly shall, before it becomes a law, be presented to the governor; if he approve, he shall sign it; but, if not, he shall return it with his objections to the house in which it shall have originated, which shall enter the objections at large on the journal, and proceed to reconsider it.'

'If any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall be presented to him, the same shall be a law in like manner as if he had signed it, unless the legislature shall, by their adjournment, prevent its return, in which case it shall not become a law without the approval of the governor.'

Did the legislature, by their adjournment, prevent the return of the bill within the ten days? If so, it failed to become a law. If its return was not thus prevented, then it became a law at the expiration of the ten days, without the approval of the governor.

After a careful consideration of the question, I am of opinion that, under no possible construction which, consistently with the settled rules of interpretation, can be given to this language of the constitution, can it be held that the return of this bill was prevented by the adjournment of the legislature.

The language of the constitution, unlike that of frequent statutes, is, throughout, carefully and aptly worded, to express, with precision and accuracy, the intent of the organic law. The word 'legislature,' as used in the clause in question, must be taken in its common, usual and natural acceptation, and to mean not either house, the senate or assembly, simply, but the organization composed of both conjointly. It is the adjournment of the 'legislature' which the constitution declares may prevent the return of a bill within the time limited.

It was manifestly the intention of the framers of the constitution that the governor should have the full measure of ten whole days in which to consider bills and to exercise his prerogative of approving or disapproving them. He cannot be deprived of this right, nor can his time be cut down by any action by either or both houses. Should the legislature adjourn within the ten days so as to prevent the return of a bill, he still has full power over it. He may thereafter approve it, in which case it becomes a law

(People v. Bowen, 21 N. Y. 517), or he may omit to approve it, in which case it does not become a law. Should the house in which a bill originated take a recess or adjourn without the concurring action of the other, from a time within to a time beyond the ten days, the governor might, in my opinion, during such recess or adjournment, and within the period limited, deliver the bill with his objections to the clerk or presiding officer of that house, and such delivery would be a return to the house in which the bill originated within the spirit and meaning of the section of the constitution above referred to. If the governor could not return a bill, with his objections, to the house in which it originated, except at a time when that house was in actual session, it would follow as a necessary result that a single branch of the legislature could do what both combined are powerless to do, namely, take from the governor a portion of the time which the constitution, for a wise purpose, gives to him. That the governor is entitled the full period of ten days — days of twenty-four hours each — after the day on which the bill may be presented to him, is plainly apparent from the language of the constitutional provision and from the reasons which underlie it. It also has the sanction of judicial authority. People v. Hatch, 33 Ill. 9; Soldiers' Voting Bill, 45 N. H. 607.

In the New Hampshire case, above cited, which arose upon a submission to the justices of the supreme court of certain constitutional questions, by the senate, under a law of that state authorizing such submission, the questions submitted involving the construction of a section of the constitution of that state similar to section nine, article four of our constitution, except that the time allowed the governor of that state is five days instead of ten, the justices say:

'If we are right in the views expressed upon the first point, viz.: that it might be sufficient for the governor to return the bill, etc., to the speaker after adjournment of the house for that day, if within the five days, then it follows, of course, that the house could not prevent the return of a bill by adjourning over any one of the five days, even though it should be the last one of the five, because the bill might in that case be returned, within the time limited, to the speaker, or the clerk, or some other proper officer.'

In conclusion, I am of the opinion, that the return of the senate bill in question was not prevented by an adjournment, within the meaning of the Constitution, on the 16th day of May; that its return to the senate on the 17th, with the veto, was too late, and that it has become a law without the approval of the governor.

Very respectfully yours,
HAMILTON WARD.
Attorney General.

On the 23d of June the Senate adopted a similar resolution as to the Ulster and Delaware Plank road bill, and this bill was also delivered to the Secretary of State.

On the 28th of June, Governor Cornell sent the following communication to the Secretary of State:

STATE OF NEW YORK:

Executive Chamber,
Albany, *June* 28, 1881.

The Hon. Joseph B. Carr, Secretary of State:

Sir.—The action of the senate in sending to your office for record and promulgation as laws, two bills vetoed by the executive May 16, ultimo, gives rise to serious conflict of opinion as to the constitutional rights and duties of the legislative and executive departments, which in my judgment the highest interest of the State requires should be promptly and definitely settled by judicial decision. Fortunately the two bills referred to are in themselves of little consequence, compared with the importance of the underlying question, namely: What is the time within which the governor shall return a bill to either branch of the legislature with his objections?

The matter in controversy is, briefly, this: Two bills originating in the senate were received at the executive chamber on May 4th, but did not meet the governor's approval. On Saturday, the ninth day after their receipt, he prepared objections to them, but the senate having adjourned from Friday until Monday, the bills could not be returned until the latter day. At a seasonable hour on Monday they were delivered to the private secretary to be by him presented to the senate. The private secretary, charged also with other messages for the senate and assembly, both of which were to meet at eight o'clock, evening, left the executive chamber at quarter before eight, and reaching the assembly before the hour of meeting, waited until its organization, whereupon he delivered the messages prepared for that body. Proceeding immediately, he reached the senate chamber at seven minutes past eight o'clock and found the senate already adjourned without the reading of its journal, or the transaction of any business. Thus by hasty adjournment, and contrary to its usual custom, the senate prevented the return of the bills in question on that day, and they were accordingly presented by him, the following morning, to the Senate, and were received by that house without objection, together with the veto messages accompanying them. In strict conformity with the constitution, the senate did 'enter the objections at large on the journal,[11] and the official document as published contains both of the messages in full. Instead, however, of further observing the constitutional direction to 'proceed to reconsider,' the senate, omitting such action, retained the bills several weeks, and finally adopted resolutions, affirming that as they were not returned within the constitutional time, they had become laws, and directing the senate clerk to deliver the same to the secretary of state.

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[11] Const. 1846, art. 4, § 9, am. 1874.

The duty of the governor is defined by the constitution in the following language: 'Every bill which shall have passed the senate and assembly shall, before it becomes a law, be presented to the governor; if he approve, he shall sign it; but if not, he shall return it with his objections to the house in which it shall have originated, which shall enter the objections at large on the journal, and proceed to reconsider it. * * * If any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the legislature shall, by their adjournment, prevent its return, in which case it shall not become a law without the approval of the governor.'[mm]

The supreme court of Illinois ([nn]33 Ill. 135), in a case almost identical with the one under consideration, decided that the governor must have the full ten days, and that a bill could only be returned to a house in session, using this language: 'It (the constitution) neither requires nor authorizes him (the governor) to return the bill to the speaker of the house, to the clerk, or to any other officer, but declares that it shall be returned to the house, and that can only be as a body. Unless the body was in session, he would be unable to return the bill to it as required by this provision. If on the tenth day the members and officers were absent, the governor would have until the first day of their next assembling to return the bill with his objections. To be required to act there must be an organized body in session at the place of holding its sessions. The executive is not required to seek the members as individuals, but to make his communications to a collective body, constituting the house which, as such, originated the bill. When dispersed there is no such body to whom he can communicate. * * *. And the time allowed for the purpose cannot be abridged, or the provisions thwarted by either accident or design. The use of the whole time given to the governor must be allowed. The constitution has spoken and it must be obeyed. The constitution in this case has allowed the governor ten days within which to act, and they must be held to be full and complete days, not parts of days.'

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[mm] Const. 1846, art. 4, § 9, am. 1874.

[nn] People v. Hatch.

The long established usage in this state has been to deliver bills, returned with objection, to either house in session, and never to an officer thereof. In numerous instances during my term, as well as in the case of nearly every one of my distinguished predecessors, bills have reached their tenth day on Saturday, when neither house was in session. The uniform practice has been to return such bills with objection on the succeeding Monday, or as soon thereafter as the legislature again assembled. Never has such course been questioned, and never has an attempt been made to give the bills thus vetoed the sanction of law. The return of bills under such circumstances has always been accepted by the legislature as a full and complete compliance with the constitutional requirement in this regard.

If it be claimed that under the circumstances these bills became laws, then it may be in the power of either house by similar action to make a law of any bill which the governor should chance to hold until the tenth day. The governor could not with safety retain a bill beyond the ninth day, and if the tenth day happened to be Monday he could not prudently hold it longer than Friday, which would be only the eighth day. This would be a manifest encroachment upon the constitutional right of the executive, to ten days, in which to determine his action on a bill.

The constitution requires the concurrence of a majority of each house to pass a bill;[oo] hence, in conferring the veto power upon the governor, he is thus enabled to antagonize a majority of both branches of the Legislature. By requiring two-thirds to enact a law, notwithstanding executive objection,[pp] it is evident the framers of the constitution could not have intended to place within the control of a bare majority of one or either house the power to defeat a veto by voting an adjournment.

Supposing after the governor had prepared his objections, and had directed the return of a bill, the secretary, on the way to the Legislature, accidentally lost it, or was overpowered and the message forcibly taken from him; or that the secretary purposely failed to deliver it to the proper house? will it be claimed that under such circumstances the bill would become a law? If so, the intention of the governor might be defeated, his efforts thwarted, and by robbery or accident, or by the design of a faithless secretary, a law created which the constitution requires two-thirds of each house to enact.

Believing that neither of these bills has become a law, therefore, respectful but earnest protest is hereby made against affixing your certificate thereto; as well also against the promulgation of either or both of said bills as laws, of description and titles as follows, namely: Senate bill 202, entitled 'An act in relation to the Ulster and Delaware Plankroad Company,' and senate bill 216, entitled 'An act to change the corporate title of the Bankers' Life Insurance and Trust Company of New York to the Bankers' Loan and Trust Company of New York.' This protest is made not only to prevent the publication of laws not duly enacted, but also in the hope that action may follow to secure a full judicial determination of the issues involved.

Yours, respectfully,
ALONZO B. CORNELL."

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[oo] Const. 1846, art. 3, § 15.

[pp] Const. 1846, art. 4, § 9, am. 1874.

The bills appear in the session laws of 1881, as chapters 707 and 708, with a note calling attention to the Senate resolution, the Attorney General's opinion, and the Governor's protest. For the opinion and protest see the volume of session laws 1881, pages 945 and 947.

Governor Cornell's practice of returning a vetoed bill at the first opportunity after the expiration of the ten days, does not seem to have been followed by later governors. Governor Hill vetoed several bills on the last of the ten days when the Legislature was not in session, in some cases saying that he was compelled to take this course because the bills could not be recalled. The journals are not specific as to the delivery of these vetoes, but apparently they passed out of the Governor's hands on the day they bear date; the journals show that they were handed down at the next meeting of the house to which they were addressed. Governor Morton vetoed a bill in 1895, and Governor Hughes vetoed two bills in 1907 on the tenth day, the Legislature not being in session. In each case the veto was delivered to an officer of the house in which the bill originated, and was handed down at its next meeting.

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## 1882. JANUARY 3. LEGISLATURE, ONE HUNDRED AND FIFTH SESSION.

### ALONZO B. CORNELL, Governor.

There was a contest over the election of a Speaker, which continued until the 2d of February, when Charles E. Patterson was chosen, receiving 59 votes, against 51 for Thomas G. Alvord. The Governor's annual message was sent to the Senate on the 11th of January, and to the Assembly on the 3d of February.

## ANNUAL MESSAGE.

## STATE OF NEW YORK:

EXECUTIVE CHAMBER,
ALBANY, *January* 3, 1882.

TO THE LEGISLATURE.— Uninterrupted prosperity has attended the people of this State during the year just ended, in all commercial and industrial interests, save in the pursuit of agriculture, from which only a moderate return of the products of the soil has been realized in consequence of the summer drought; but this deficiency has not been such as to occasion suffering or alarm. Stimulated by the unprecedented development of manufacturing enterprises of various kinds, cities and villages have taken new and rapid growth; and the establishment of many recent railway lines promises at no distant day, important and valuable additions to public facilities for transportation. Investments in building and other permanent improvements, have been larger and less speculative than in any previous year; and an increasing demand for labor, therefore, with corresponding benefits of compensation, has perceptibly improved the condition, and promoted the contentment, of the working classes. To the shiftless and improvident, want and idleness seem alone confined. For these blessings in such measure bestowed, as well, also, for the satisfactory state of the public health, the observance of law, and the preservation of order, it becomes us to manifest sincere thankfulness to the Source of All Good, for His gracious care; and gratefully to seek His continued favor and guidance through the coming year.

But though peculiarly blessed in material respects, we have been suddenly plunged into national grief and mourning. The wicked assassination of the President of the United States convulsed every heart. The whole civilized world felt the blow. That the chief magistrate of this great republic should be murderously assailed, and languishing, die, in a time of such general prosperity and peace, produced a shock unparalleled in our history. Sorrow fell over all like a pall. The expressions of sympathy, coming with signal accord from every quarter of Christendom, evidenced, impressively, the amity and respect entertained toward us by all enlightened nations. But that such an appalling event could occur without violent or disastrous consequences to public order, and with no excitement or turmoil attending the transfer of executive power to the constitutional successor, affords a fitting illustration of the wisdom and stability of our form of government, enduring in the devotion and loyalty of the American people. To the munificent provision for the widow and fatherless children, quickly undertaken and accomplished in a noble impulse and spirit, citizens of this State contributed with a liberality and zeal alike honorable to themselves and to the proud name sustained by New York in the sisterhood of the Union.[1]

## FINANCES.

The prudent and economical administration of the financial affairs of the State is demonstrated by the condition of the State treasury, and must prove gratifying to every citizen. During the past year the public revenues have been adequate to satisfy all legitimate claims, and provide $376,500 for the Sinking Fund, leaving on hand besides, a surplus larger by $1,846,856 than that which existed at the close of the preceding year. The operations of the financial department for the past fiscal year and the general condition of the State Treasury on the 30th of September, 1881, are exhibited by the following detailed statement:

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[1] James A. Garfield, president of the United States, was shot in the city of Washington on the 2d of July, 1881, and died at Elberon, N. J., September 19, 1881. He was succeeded by the Vice-President, Chester A. Arthur of New York.

### RECEIPTS AND PAYMENTS.

| | |
|---|---|
| Aggregate balances in the Treasury of all the funds October 1, 1880 | $3,448,215.38 |
| Aggregate receipts during the fiscal year ending September 30, 1881 | 14,940,403.90 |
| | $18,388,619.28 |
| Deduct payments during the year | 12,856,760.57 |
| Balance in the Treasury Sept. 30, 1881. | $5,531,858.71 |

| | |
|---|---|
| The amount of receipts into the Treasury on account of the General Fund revenue, during the year ending September 30, 1881 | $8,751,034.80 |
| The payments | 6,986,370.01 |
| Apparent surplus, September 30, 1881. | $1,764,664.79 |

### SUPPLEMENTARY STATEMENT.

| | |
|---|---|
| Balances due from county treasurers, September 30, 1881, on State tax of 1880 | $247,025.47 |
| Add amount paid on account of 1881 appropriations, included in tax levy payable into the State treasury in April and May, 1882, of which $440,000 was for new Capitol | 1,021,272.51 |
| Add apparent surplus of the revenue, September 30, 1881, as shown in preceding statement | 1,764,664.79 |
| Total | $3,032,962.77 |
| Deduct balances of 1880, appropriations unpaid and in force September 30, 1881. | 533,347.50 |
| Actual surplus, September 30, 1881 | $2,499,615.27 |

## DEBT.

On the 30th September, 1880, the total funded debt was $9,114,054.87, classified as follows:

| | |
|---|---|
| General Fund (Indian annuities) | $122,694.87 |
| Canal | 8,988,360.00 |
| Bounty | 3,000.00 |
| Total | $9,114,054.87 |

On the 30th September, 1881, the total funded debt was $9,109,054.87, classified as follows:

| | |
|---|---|
| General Fund (Indian annuities) | $122,694.87 |
| Canal | 8,983,360.00 |
| Bounty | 3,000.00 |
| Total | $9,109,054.87 |

| | |
|---|---|
| A balance of $2,422,981.57 in the Canal Sinking Fund leaves the amount of that debt, unprovided for September 30, 1881, at | $6,560,378.43 |

| | |
|---|---|
| The State debt on the 30th of September, 1880, after deducting the unapplied balances of the Sinking Funds, amounted to | $7,059,574.70 |
| On the 30th September, 1881, including $122,694.87 | 6,683,073.30 |
| Showing net contributions to Sinking Fund of | $376,501.40 |

| | |
|---|---|
| The actual reduction of the debt during the same period by cancellation being... | $5,000.00 |

### TAXATION.

The tax levy enacted by the last Legislature for the current fiscal year, is at the rate of 2¼ mills, which it is estimated, will yield, on the present valuation, a revenue of $6,032,829.61. The levy of the preceding year was at the rate of 3½ mills, and produced $9,232,542.33. Thus it will be seen that the burden laid on the taxpayers directly for State purposes, has been reduced this year more than one-third, as compared with the previous year. With the large surplus now in the treasury, if the appropriations by the present Legislature be confined to the actual necessities of the State, the rate of taxation for the coming year can be still further and materially reduced. Sound policy dictates that the present encouraging condition of the fiscal affairs of the State shall not be disturbed by inconsiderate or extravagant legislation, but that appropriations be confined to legitimate expenditures, and the completion of public works now in progress.

The necessity of a revision of the laws relative to assessment and taxation still exists, and reform in this regard is urgently demanded by the people. This subject was earnestly presented in my previous annual messages, and much discussion was devoted to it by the last two Legislatures, without, however, securing satisfactory results. Beyond a modification of the law defining the term ' land,' nothing practical has been accomplished in this respect. One great defect in the assessment laws is their failure to reach personal property, thereby imposing an undue proportion of the burden of taxation on the owners of real estate. The reduction in the rate of taxation for State purposes affords but moderate relief to the long suffering taxpayer, for the reason that much the larger proportion of taxation results from expenditures made by city, village or county authorities; and in many localities the rate of taxation consequent upon large local indebtedness is such as to render the condition of the landowner extremely unfortunate.

Until some comprehensive and practical measure be matured, and embodied in the statutes of the State, distributing the expenses of government, both local and general, fairly and equitably among all property owners, the issue will still remain, and be pressed for solution on the law-making authority of the State. Your attention is earnestly directed to this subject, as the importance of the question demands, in the hope and belief that your wisdom will be equal to the requirements of the case.[2]

As a means of relieving, to some extent, ordinary taxpayers from the expenses of the State government, laws were enacted during the last two years, for special taxes on corporations. Some imperfections in the terms of these laws have prevented the accomplishment of all that was designed, but the results so far realized have been such as to convince the practical observer that something still more effective and desirable can be reached by judicious amendment of existing acts. During the last fiscal year the sum of $992,725.16 was received and paid into the State Treasury under the operation of these laws, in addition to $141,127.03, collected during the preceding fiscal year. The Comptroller will furnish suggestions, based on the experience of administering these special laws, that will doubtless aid you in framing the necessary amendments.

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[2] See 1881, *ante*, p. 570, for references to legislation enacted or proposed relative to taxation.

## CANALS.

The limited movement of grain products, and unusual competition between the trunk lines of railway during the past season, have largely reduced the volume of traffic on the canals, whose revenues have suffered a corresponding reduction. During the calendar year 1880 the total number of tons moved was 6,457,656, while for the year 1881 the amount was only 5,175,505, showing a loss in traffic the current year, of 1,282,151 tons. Furthermore, canal freights have been lower than in any previous year; the average for the season, from Buffalo to tide-water, was, for wheat, 4 88-100 cents per bushel; and for corn, 4 37-100 cents per bushel. After deducting the tolls, at 1 3-100 cents per bushel for wheat and 96-100 cents for corn, the above rates netted the carrier but $1.28 per ton; and during a portion of the season only 90½ cents per ton from Buffalo to New York, a distance of nearly five hundred miles. The movement of west bound traffic for 1880, was 1,518,290 tons, and in 1881, 1,365,418 tons; showing a decrease of 152,872 tons this year, notwithstanding the removal of tolls on this class of traffic.

The revenues of the canals for the year ended September 30, 1881, were as follows:

| | |
|---|---|
| Tolls | $810,532.05 |
| Rent of surplus water | 1,535.00 |
| Miscellaneous | 6,197.56 |
| Total | $818,264.61 |
| Total expenditures for collection, superintendence and ordinary repairs | 1,023,907.06 |
| **Expenditures in excess of revenue** | **$205,642.45** |

This deficiency in revenue was supplied from the fund for extraordinary repairs, in pursuance of section 2 of chapter 449, Laws of 1881.

The sum of $818,264.61 (the gross income of the last fiscal year), under the constitutional restriction,[a] will be the limit of expenditures for the current fiscal year, which will end September 30, 1882. But the estimated receipts from tolls will aggregate only $640,000, leaving a deficiency of $178,000 in revenue to meet the ordinary repair appropriation for the same year. This deficiency can be supplied in the same manner as last year, by a contingent appropriation from the extraordinary repair fund, of which there is left unappropriated about $460,000.

It will be observed that the expenditures for the collection of tolls, superintendence and ordinary repairs for the last fiscal year were $134,891.22 in excess of the preceding year. All of this amount, and a considerable sum in addition, was expended for necessary work which had been unavoidably postponed in consequence of the diminished revenues of the years 1878 and 1879; and for material to be used for repairs hereafter. The necessity for the purchase and accumulation of material for use in succeeding years is due to the constitutional restriction which limits the expenditures in any one year to the amount of gross income of the previous year. This safeguard is fully justified in view of the lessened revenues of the current year, and the prospect of still greater reduction of income for the year to come.

If the revenues for the current fiscal year, ending September 30, 1882, do not exceed the foregoing estimate of $640,000, then that amount will be the limit for expenditures for the fiscal year ending September 30, 1883, regardless of the actual revenue for that year; unless, in the meantime, the Constitution be amended. This sum seems altogether insufficient for a year's maintenance.

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[a] Const. 1846, art. 7, § 6, am. 1874.

There should have been contributed from the revenues of the last fiscal year to meet the constitutional requirements for deficiency in the Sinking Fund:[b]

| | |
|---|---|
| Interest on canal debt.................... | $538,602.00 |
| For the Sinking Fund.................... | 450,000.00 |
| Total not realized.................... | $988,602.00 |
| Add for deficiency in tax of 1880......... | 17,098.59 |
| Add for interest on these deficiencies until same can be realized from taxes........ | 80,456.05 |
| Total amount to be supplied by tax... | $1,086,156.64 |

The competition of railways, the enlargement of the Canadian canals, and the development of the Mississippi river route, are important considerations with reference to the future capacity of the canals to earn the necessary revenue for maintenance. If, added to these, there should be a smaller foreign demand for breadstuffs, or reduced production in the western States, it is plain to be seen that under the present constitutional restriction on canal expenditures, the usefulness of the canals may be seriously imperiled, if not entirely suspended, until relief be secured through an amendment to the Constitution. In view of the time required for this process, your consideration of the pending propositions for constitutional amendment is respectfully suggested.[3]

### CANAL APPRAISERS.

There has been a large falling off in the number of claims for canal damages filed with the appraisers, as compared with the preceding year, and a proportionate diminution in the amount of damages claimed. Eighty-nine new claims, amounting to $110,080, were presented last year, against two hundred and twenty-five claims, aggregating $428,820, the year previous. One hundred and seventy-two cases were heard and determined by the Board of Canal Appraisers during the year. On those considered the damages claimed amounted to $418,775, while the awards allowed thereon were only $10,635.72. The number of claims awaiting adjudication, and on file in the department at the end of the year, was seven hundred and forty-one. The Appraisers are entitled to credit for the care with which they have kept their important trust, and guarded the interests of the State committed to their charge.

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[b] Const. 1846, art. 7, § 1.

[3] Chapter 229, passed May 27, 1882, submitted to the people at the next general election amendments to article 7 of the Constitution, abolishing canal tolls, providing for canal expenses, and the canal debt by taxation, and adding the Black River canal to the canals which could not be sold. The amendments were approved.

## PUBLIC EDUCATION.

The most notable feature respecting the interests of public education, is presented by the marked decrease in the number of children attending public schools during the past year, as shown by reports made to the Superintendent of Public Instruction, in which the number is stated at 1,021,282, as against 1,031,593 for the preceding year. It is not easy to determine what has caused this noticeable difference, unless, possibly, it be attributable to the increased demand for labor, by reason of which children may have been withdrawn from the schools to engage in various employments. Whatever the cause it is sincerely to be regretted, as it cannot but prove unfortunate to the well being and usefulness of the rising generation.

The constant decline of the school district libraries affords striking evidence of the necessity for more liberal provision for their support. The number of books in these libraries last year is reported at 707,155, which, compared with the previous year, is a decrease of 28,508. In 1860 the number was 1,286,536; and a gradual but certain reduction has been going on each succeeding year. These libraries afford many facilities for information, not only to children, but likewise to adults; and they should not be permitted to deteriorate or waste away. Perhaps a change from the district system to that of town libraries might be advantageously made. But it is clear that some well-timed and expedient method should be adopted to arrest the present downward tendency; otherwise the $50,000, under present laws annually appropriated to library purposes by the State, might better be directed to some other object.

### COMMON SCHOOL STATISTICS.

For the year ending September 30, 1881:

| | |
|---|---|
| Total receipts, including balance on hand September 30, 1881 | $11,984,715.08 |
| Total expenditures | 10,808,802.40 |
| Amount paid for teachers' wages | 7,775,505.22 |
| Amount paid for school houses, repairs, furniture, etc. | 1,467,361.00 |
| Estimated value of school houses and sites. | 31,091,630.00 |
| Number of school houses | 11,894 |
| Number of school districts, exclusive of cities | 11,248 |
| Number of teachers employed for the legal term of school | 20,728 |
| Number of teachers employed during any portion of the year | 30,826 |
| Number of children attending public schools | 1,021,282 |
| Number of persons attending Normal schools | 5,944 |
| Number of children of school age in private schools | 108,309 |
| Number of volumes in school district libraries | 707,155 |
| Number of persons in the State between the ages of five and twenty-one years | 1,662,813 |

## COLLEGES AND ACADEMIES.

Reports have been received by the Regents of the University during the past year, from twenty-two literary colleges, comprising 388 instructors, 4,389 students, and representing property to the amount of $17,240,400; also, returns from 236 academical institutions with 1,182 instructors, and 31,036 pupils; of the latter of whom 9,759 are stated as pursuing academic studies and forming the basis for the apportionment of the literature fund.

The past year has been exceptional for the unusual number and amount of donations made to the various colleges and universities of the State. These institutions are keeping pace fully with those of other States, and afford gratifying promise of increased usefulness in the future. The demand for educated service is such that most of the graduates from the scientific courses of collegiate institutions find prompt and profitable employment. This fact is calculated to exert an important and most salutary influence on the material development of the country, and every relation of society.

As trustees of the State Library the Regents of the University have made provision for arranging and editing the Clinton manuscripts, and other State papers, under the authority heretofore granted by the Legislature. The scope and progress of this work will be reported to you in due season, and will doubtless engage an interest appropriate to its character.[4]

## BANKS.

Perhaps in no other way can the improved financial condition of the people of the State be more readily discerned and appreciated than from the condition of the banks, and more particularly the savings banks, in which the surplus earnings of people in moderate circumstances are deposited. Notwithstanding the smaller rate of interest now allowed depositors incident to the constant reduction in income from all really first-class securities, these institutions show large gains in the number and amount of deposits. A most gratifying feature of the condition of the savings banks, is the substantial increase of their surplus funds, thus insuring greater stability and security against loss in less prosperous times.

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[4] See *post*, p. 808, for a note on the purchase of the Clinton papers.

On October 1, 1881, seventy-two banks of discount and deposit were engaged in active business, under the provisions of the State banking laws; and their condition was as follows:

| | |
|---|---|
| Resources | $113,463,572 |
| Capital | 19,025,700 |
| Surplus and profits | 8,928,175 |
| Due depositors | 75,717,130 |
| Other liabilities | 9,792,567 |

During the year deposits increased, $13,921,357; profits, $869,895; loans and discounts, $11,242,376. The net aggregate increase in assets was $13,612,817. Five new banking associations organized during the year, and one changed from a State to a National bank; leaving four as the net increase in number of associations.

One hundred and twenty-eight savings banks reported July 1, 1881; eleven of which are in process of voluntary liquidation and do not receive deposits; the only act necessary to complete their final dissolution being the transfer of unclaimed balances, to the Superintendent. No savings bank closed during the year. In July last a certificate of authorization was granted for a savings bank in Buffalo, that being the only one organized since 1875. The condition of the savings banks on July 1 was as follows:

| | |
|---|---|
| Resources | $424,204,808 |
| Due depositors | 370,672,297 |

| | |
|---|---|
| Surplus | $53,303,383 |
| Other liabilities | 229,127 |
| Number of open accounts | 995,742 |

The increase in the several items during the year was as follows:

| | |
|---|---|
| Resources | $47,993,568 |
| Deposits | 35,210,727 |
| Surplus | 12,759,929 |
| Open accounts | 82,879 |

There are thirteen trust, loan and mortgage companies in operation in the State, owning $130,000,000 of assets. The aggregate capital employed is $12,000,000. During the year one new trust company organized.

There are ten corporations for the safe-keeping and guaranteeing of personal property, two of which organized during the year; the capital invested being $1,976,900.

## INSURANCE.

A report of the condition of the several classes of insurance companies transacting business in this State, furnished by the Superintendent of the Insurance Department, presents a gratifying improvement in their condition during the past year.

On the 31st of December, 1880, there were 161 fire insurance companies doing business in this State, of which 86 were New York State companies, 53 of other States, and 22 foreign, with total assets of $146,398,641; liabilities, including capital stock, $97,784,334; and net surplus, $48,614,307. These companies received during the year a gross cash income of $66,420,034, and their gross cash expenditure was $60,925,644. During the year 1881 six other State and three foreign fire insurance companies were admitted to transact business in this State. Four New York fire insurance companies discontinued business and reinsured their risks, and three other State companies withdrew their agencies and ceased to do business in this State, during the same period.

Twelve life insurance companies, organized under the laws of New York, are now in operation, with aggregate assets of $214,647,574; liabilities, $177,357,829; surplus, as regards policy holders, $37,289,744. Of other State life insurance companies, eighteen are now conducting business in this State, having assets of $203,303,435; liabilities, $169,031,510, and surplus to policy holders, $34,271,925. Of marine insurance companies eighteen are transacting business in this State, of which ten are foreign, six New York, and two other State companies, with assets amounting to $21,315,263, and a net surplus of $4,443,177. There are also two New York and two other State casualty insurance companies doing business, with $2,122,021 assets, and $843,004 surplus.

Securities for the protection of policy holders insured by the various insurance companies doing business in this State, of the kind and amount required by statute, were held on deposit by the Insurance Department on the 31st of December, 1880, as follows:

| | |
|---|---|
| New York State Life | $3,977,560.00 |
| New York Casualty | 201,426.00 |
| New York Fire | 1,562,000.00 |
| Other State Fire | 20,100.00 |
| Foreign | 7,060,000.00 |
| Aggregate | $12,821,086.00 |

Within the last eight months the Superintendent of the Insurance Department has distributed to the policy holders of bankrupt life insurance companies from the proceeds of securities held by him for their benefit, the sum of $94,575.

## CO-OPERATIVE INSURANCE.

The plan of co-operative insurance first inaugurated by various secret societies has, in recent years, become very popular; and many organizations have been established for this distinctive purpose. When prudently organized, and intelligently and honestly managed, this kind of associations undoubtedly offers the most economical mode of life insurance. Providing as it does for the comfort of multitudes of families that might otherwise be left destitute and dependent, it is of the greatest importance that every prudential measure necessary be taken by the State to guard and protect these humane and praiseworthy associations from abuse. A bill passed the last Legislature to exempt this class of societies from all jurisdiction of the Insurance Department, which would have allowed unchecked introduction into this State of hundreds of fraudulent and speculative organizations existing in other States. It appearing that such a step would prove disastrous to the true interests of well ordered organizations now so flourishing in our State, this bill was disapproved by me; and thereafter, another measure was enacted providing for the conservative and helpful supervision of the Insurance Department, designed especially to foster and strengthen all interests involved, and protect them from the intrusion and depreciation of degrading influences. The frequent reports published of the disastrous results of wholesale graveyard insurance in other states, have more than vindicated the wisdom of the policy thus pursued.

The general law providing for the organization of these societies can doubtless be amended to the advantage of *bona fide* associations; and it is hoped that the subject will receive due deliberation at your hands.[5]

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[5] Chapter 38, passed March 24, 1882, amended the county co-operative insurance law of 1880, chapter 362, relative to territorial limits within which a company could transact business.

Chapter 282, approved June 5, amended the county and town co-operative insurance companies law of 1879, chapter 287, relative to organization, administration and territorial limits of operation, and chapter 312, approved June 6, amended the same act relative to notice of assessments.

## NATIONAL GUARD.

In furtherance of the policy suggested in my last annual message, the National Guard has been materially reduced in numbers, and a reorganization ordered on a basis which, it is believed, will render the force more efficient and useful for the service required; while it will also effect a considerable reduction of unnecessary expenditures. Two of the division organizations have been dispensed with, and their commands consolidated with the remaining four general divisions. Three brigade organizations have also been abolished, thus leaving two brigades in each division.

The force, as reorganized, consists of four divisions, eight brigades, fifteen regiments, one organized battalion, forty-two separate companies of infantry, and seven separate batteries of artillery, comprising, in the aggregate, 12,495 officers and enlisted men; and this is believed to be abundant for any emergency liable to arise. Should it, however, be regarded desirable in the future, to increase the strength of the force, it can be done by enlarging the present commands, without duplicating organizations.

The usefulness of the National Guard, under our military system, does not depend so much on the number of men enrolled as on the efficiency and thorough discipline of the several commands. Much, too, depends on the character, intelligence and patriotic devotion of the officers and men in the service. It is believed that by raising the standard of qualification among officers, and the physical ability of the men, and by placing the troops in camp service at reasonable intervals, the present force will be made far more effective for practical purposes than a much larger one would be without these essential considerations. It was aimed to secure this desirable object, avoiding the necessity of enlarged appropriations of public funds for military purposes, that the policy of reducing the force has been pursued; and it is confidently predicted that the course taken will be vindicated by experience.

The present mode of providing uniforms for the members of the National Guard is needlessly expensive and wholly unsatisfactory. It entails an undue expense on the men, and fails to provide such equipment as the needs of the service require. A service uniform provided by the State, that can be procured at a much smaller cost than the men are now able to obtain a less desirable article for, would prove far more useful in every respect. The adoption of this plan will require an amendment of the present law, which is respectfully commended to your favorable attention. The appearance of the troops of several of the other States, on the occasion of the military demonstration at Yorktown, in honor of the centennial celebration of the surrender of the British forces under Cornwallis, could not have failed to impress all interested observers with the advantages and desirability of a uniform dress for the militia.

## THE NEW CAPITOL.

Very satisfactory progress has been made, the past year, toward the completion of the New Capitol. The Senate Chamber, although not entirely finished, was occupied a portion of the time during the last session of the Senate, but has since been substantially completed; and is, indeed, magnificent in architectural and artistic design. The rooms for the Executive Department were put in readiness, and formally occupied, several months ago; and they prove in every way well appointed. The Insurance Department and the State Board of Health, are also now located in the new building, while the rooms designed for the Military Department and the Superintendent of Public Instruction are nearly done, and will soon be occupied. The offices for the Secretary of State are now being placed in order, and are expected to be ready for use during the winter.

The Judges of the Court of Appeals express dissatisfaction with the apartments designed for their use, and seem unwilling to occupy them at present. They desire to have rooms set apart for them in another quarter of the building, and have indicated a preference for a portion of the space originally intended for the State Library. It is believed that a change in the location of the library to the west end of the edifice would be quite satisfactory to the authorities having charge of the Library; which would afford opportunity for the change desired by the Court of Appeals. This, however, involves such a radical alteration in the plans of the building heretofore adopted, that legislative sanction would seem first to be necessary. Could the change suggested be effected without unreasonable expense, it would be, perhaps, quite desirable.[6]

The expenditures on account of the erection and furnishing of the New Capitol during the past year have been as follows:

| | |
|---|---|
| Balance of previous appropriations on hand as reported in the last annual message.... | $421,180.60 |
| Chapter 24, Laws of 1881.................. | 250,000.00 |
| Chapter 324, Laws of 1881.................. | 750,000.00 |
| | $1,421,180.60 |
| Expended during the year................ | 1,187,962.57 |
| Balance on hand December 16, 1881.... | $233,218.03 |

---

[6] Chapter 295, approved June 5, made an appropriation of $1,000,000, for continuing work on the New Capitol.

The same act required the New Capitol commissioners to provide a "chamber and other suitable and adequate accommodations for the Court of Appeals in such portion of the unfinished interior of the New Capitol building as they may select, and the plans and specifications for the completion of such chamber and rooms for said court shall be submitted by the said commissioners to the judges of the Court of Appeals for their acceptance or rejection on or before August 1st, 1882, and when such plans shall be accepted by said judges on the written certificate of the chief judge to said commissioners, they shall immediately proceed with the work of completion of said chamber and rooms according to such approved plans and specifications, and cause the same to be completed with all possible diligence."

This amount will be required to complete payments on contracts not yet wholly completed; and on outstanding and unadjusted liabilities; and, also, to continue work now in progress. The Commissioners in charge will, in due time, report to the Legislature, a more detailed account of their proceedings, and indicate the amount of appropriation desirable for their purposes during the coming year.

Authority was given by the last Legislature for the demolition of the Old Capitol, at the discretion of the Commissioners, which can, probably, be advantageously effected early the coming spring. Provision should be made for the improvement of the Capitol grounds, with suitable embellishments, as soon as the old building and State Library are removed, in order to avoid the unsightly appearance that would otherwise be presented. Prompt action is very desirable, so that the trees and shrubbery that may be planted, can take early growth.[7]

## SALT SPRINGS.

The total amount of salt inspected on the Onondaga salt springs reservation, for the fiscal year ending September

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The same act made the following provision for the State Library:

"There shall be constructed, in such unfiinished parts of the interior of the New Capitol building as the commissioners shall designate, an adequate and suitable room and rooms for the accommodation of the State Library and the trustees thereof, and the commissioners are hereby directed to submit plans therefor, as provided in section one of this act, to said trustees for their acceptance or rejection on or before August 1, 1882, and if such plans are accepted by said trustees, and their acceptance, duly certified in writing to said commissioners, by the prosecution of the work as rapidly as possible."

[7] Chapter 7, passed March 1, appropriated $250,000, for continuing work on the New Capitol.

Chapter 295, approved June 5, appropriated $1,000,000 for the same purpose, and authorized the Governor to appoint a commission to be composed of two architects and one civil engineer "who shall survey and examine the different parts of the New Capitol, as to the safety and durability of the work, more especially as concerns the Assembly chamber, and the ceiling thereof." The act appropriated $5,000 for this commission. There was no special direction as to improvements on the land lately occupied by the Old Capitol and the State Library.

30, 1881, was 7,633,394 bushels, and the financial operations of the agency were as follows:

| | |
|---|---|
| Duties collected | $76,334.47 |
| Penalties, rents and sales | 130.00 |
| Total receipts | $76,464.47 |
| Expenses incurred | 59,470.24 |
| Surplus revenue | $16,994.23 |

In connection with this interest of the State, there is no particular occasion for remark beyond the fact that it seems to be well and profitably managed.

### AGRICULTURAL EXPERIMENT STATION.

The board of control of the State Agricultural Experiment Station, created by chapter 702 of the Laws of 1881, after deliberate and very thorough consideration of the subject committed to them, and after careful examination of the various farms offered for the station, have finally determined upon its location near the village of Geneva, Ontario county; and have appointed a director, in accordance with the provisions of the statute. The location is regarded as extremely eligible for the purposes designed, and the property selected is in such condition with respect to buildings and general improvement as to warrant the expectation that the station will be in successful operation within a very few months.

With the station established and in practical process, important results promotive of approved and profitable agricultural methods, may be confidently looked for. Experiments directed by scientific men, whose tests shall have been proved, will be carefully noted; and all information as to the best means, and the product of given work in applied science of agriculture, will be disseminated for the benefit of those who choose to employ it. If this institution shall prove a help to larger production and more profit in the cultivation of the soil, and the growing of farm stock, its usefulness will soon be recognized, and its influence felt in the material advancement of the natural resources of the State. It is not by manual labor alone, but by intelligent forces combined with it, that the best effects are obtained. The trustees of the station will in due time make detailed report to the Legislature, as required by law.[8]

## PLEURO-PNEUMONIA.

It is a matter of congratulation that while the cattle disease known as pleuro-pneumonia, which formerly menaced the farmers in this State is not entirely eradicated, it has been confined to limited areas; and seems to be gradually disappearing. With a single exception, not likely to cause further trouble, the disease has been confined to a small portion of Long Island; and it is hoped that it may be speedily and entirely eliminated from our territory. The total expenditure incurred in maintaining supervision over the infected region, and in exterminating the malady where it has appeared, was, during the last fiscal year, $3,181.27. The balance of appropriations remaining available for the prosecution of this work, will be abundant for all necessities that may arise during the current year, unless, however, a serious outbreak of the trouble should occur, not now anticipated.[9]

## OLEOMARGARINE.

The introduction of the new article of manufacture known as oleomargarine, as a substitute for the genuine product of the dairy, has justly caused much dissatisfaction on the part of the farmers engaged in the production of butter. Chapter 415 of the Laws of 1877, and chapter 439 of the Laws of 1880, were enacted for the protection of dairymen, and to prevent deception in the sale of butter. These statutes require that any article in semblance of butter, not the legitimate product of the dairy, and not made exclusively of milk or cream, shall have distinctly marked or stamped on each package the word "Oleomargarine." Complaint is made that these laws are constantly violated, and that large quantities of oleomargarine are sold by dealers as real butter, without the required brand. Two bills were passed by the last Legislature relating to this subject, but, unfortunately, the provisions of both were in conflict with the Constitution and laws of the United States, and they were, therefore, returned to the House in which they originated without Executive approval.

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[8] Chapter 257, passed May 31, appropriated $25,000 for the purchase of a farm selected as a site for an agricultural experiment station.

[9] See 1881, note 11, for legislative action relative to contagious diseases of animals, *ante*. p. 537.

It is the undoubted duty of the proper authorities to enforce the laws now existing for the protection of the dairy interests; and also, in the interest of consumers, to prevent the sale of oleomargarine as butter. If it be found that their provisions are ineffectual, then they should be amended in such manner as to provide stringently against all deception and fraud in the sale of an article of such universal use as butter. While the patent laws of the United States must be duly observed, there ought to be no difficulty in enacting a law that will reasonably protect the producer of natural butter, and likewise, the consumer. Oleomargarine is a product of manufacture recognized and protected by Federal statute, and its sale under the patented name cannot be interfered with by State regulation unless demonstrated to be deleterious to health. But it cannot properly be sold as butter; and all such sales should be strictly forbidden and prevented.[10]

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[10] Chapter 214, passed May 24, 1882, prohibited the coloring of oleomargarine, butterine, and adulterated cheese with an intent to sell the same for food.

## RAILROAD TRANSPORTATION.

The constantly increasing development of railroad facilities enhances the importance of a fair and just regulation of freight traffic. While, to a certain extent, the competition of rival lines relieves many localities of embarrassments formerly suffered, yet the continuous absorption of the carrying trade by railways renders the effect of marked discrimination in rates all the more injurious to those against whom it operates. Experience demonstrates that increased traffic has induced cheaper rates, and but for the effect of unjust discrimination as between individual patrons and communities, there would be, perhaps, no serious cause for complaint at the present time.

Much depends in the prudent and successful conduct of many kinds of business, on the uniformity and steadiness of freight charges, and also on their general publicity. These results could easily be secured by legislation that need not be onerous to the railroads. More important still to business interests is the question of discriminating rates; and the remedy is also, more difficult to devise. It may not, perhaps, be possible to cure the evil by arbitrary legislation; but it ought not to be difficult, for a beginning, to afford some amelioration, leaving future experience to point out and secure complete relief.

This question was pressed upon the attention of the Legislature in both of my former annual messages, and became the subject of much deliberation, without, however, securing definite action. There are cogent reasons why it should

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Chapter 215, passed May 24, was intended to regulate the manufacture and sale of oleomargarine, or any form of imitation butter and lard, or any form of imitation cheese. The use of coloring matter was prohibited in butter or cheese not made exclusively from milk or cream. Sale of imitation butter or cheese was prohibited unless marked as specified in the act.

Chapter 238, passed May 30, contained provisions of a similar character.

Chapter 246, passed May 31, "to prevent fraud in the sale of oleomargarine, butterine, suine or other substance not butter," made it a misdemeanor to sell imitation butter as genuine.

command your attentive consideration, and the hope is indulged that you will be enabled to devise a measure which shall afford the needed relief to patrons, and at the same time not impose unreasonable burdens on the corporations that have contributed so much to develop and enlarge the commercial facilities of the State.

## STATE PRISONS.

For the first time in their history the State prisons were self-sustaining during the past year. The earnings of the convicts have sufficed for current expenses, leaving a small balance besides, to the credit of the prisons, in the treasury of the State. The average number of prisoners confined at Auburn, Clinton and Sing Sing in the last four years was as follows:

| | |
|---|---|
| 1878 | 3,379 |
| 1879 | 3,062 |
| 1880 | 2,970 |
| 1881 | 2,997 |

The following statement shows the amount of the earnings and expenditures on account of the several prisons for the fiscal year which closed September 30, 1881:

### SING SING.

| | |
|---|---|
| Earnings | $229,254.14 |
| Expenses | 187,127.20 |
| Surplus | $42,126.94 |

### AUBURN.

| | | |
|---|---|---|
| Earnings | $113,658.63 | |
| Expenses | 118,781.85 | |
| Deficiency | | $5,123.22 |

### CLINTON.

| | | | |
|---|---|---|---|
| Earnings. | $61,443.14 | | |
| Expenses. | 97,882.51 | | |
| Deficiency. | | 36,439.37 | |
| | | | $41,562.59 |
| Actual surplus for the year | | | $564.35 |

### ELMIRA REFORMATORY.

The total number of persons received and treated at the Elmira Reformatory since it has been in operation is 1,238, of whom 753 have been discharged, leaving 485 in custody September 30, 1881. The average number of inmates during the past year was 493; and a maximum of 535 was reached in the meantime. The cost of maintenance over earnings, since the industries were inaugurated, has been as follows: For 1879, $21,284.92; 1880, $21,681.22; and for 1881, $40,860.37. The marked increase for the last year is attributed to reduced production and diminished sales incident to the change from manufacture on public account, to the contract system, pursuant to the law of 1881. With the present capacity of the Reformatory, which at most can accommodate not more than 600 inmates, and the expenditure necessary to its suitable management, it is not expected that the earnings under the contract system will equal the cost of maintenance. The indebtedness of the Reformatory, as stated by the special legislative committee last year, has all been paid, and the institution is reported to be now free from debt. The managers report that more than eighty per cent of the inmates, conditionally released, have assumed industrious and reputable habits, and that society has reasonable pledge from them of immunity from further misconduct.

## HOUSE OF REFUGE FOR WOMEN.

The board of managers of the House of Refuge for Women, appointed pursuant to chapter 187 of the Laws of 1881, have purchased, at an expense of three thousand dollars, thirty acres of land within the corporate limits of the city of Hudson, as a site for the contemplated institution. The location appears to be in every way eligible for the purpose designed, and the price of the property secured must certainly be considered highly advantageous to the State. The managers are now seeking information with reference to plans for building, in expectation of proceeding at an early day with the work of construction. One hundred thousand dollars have been appropriated for the complete and practical establishment of this institution. Thus far the managers have made a prudent use of their means; and if they succeed as well throughout, and keep within the limit of the original appropriation, as was designed, their course will be deservedly commendable, and fortunate to the State.

## CHARITABLE INSTITUTIONS.

The State Board of Charities furnish information that the various charitable and other institutions coming within their purview, report expenditures for the year ending September 30, 1881, as follows:

| | |
|---|---|
| State institutions | $1,571,641 |
| County poor houses | 1,170,842 |
| City alms houses | 1,117,878 |
| Orphan asylums and other homes | 4,035,835 |
| Hospitals | 1,302,158 |
| Dispensaries | 161,946 |
| Total | $9,360,300 |

The following is a classification of these expenditures as far as ascertained:

| | |
|---|---|
| Salaries and wages | $1,143,351 |
| Provisions and supplies | 3,940,793 |
| Clothing | 280,671 |
| Fuel and lights | 317,060 |
| Medicines and medical supplies | 104,587 |
| Buildings and improvements | 984,979 |
| Furnishing | 142,268 |
| Ordinary repairs | 209,042 |
| Indebtedness, principal and interest | 656,693 |
| Investments | 484,432 |
| Not enumerated | 1,096,421 |
| Total | $9,360,297 |

The funds for the support of these institutions were derived from the following sources:

| | |
|---|---|
| State of New York | $913,044 |
| Cities and counties | 4,707,314 |
| Labor of inmates | 126,978 |
| Paying patients | 268,669 |
| Donations | 1,152,754 |
| Income of invested funds | 379,216 |
| Loans | 663,392 |
| Non-enumerated sources | 1,148,933 |
| Total | $9,360,300 |

| | |
|---|---|
| Of State paupers in the various alms-houses there were on September 30, 1880 | 195 |
| Committed during the year ending September 30, 1881 | 1,373 |
| | 1,568 |

| | |
|---|---|
| Discharged upon recovery | 492 |
| Secured employment | 10 |
| Absconded | 91 |
| Transferred to other institutions | 13 |
| Furnished transportation to place of legal settlement, or to their homes in other States and countries | 745 |
| Died | 44 |
| Under care September 30, 1881 | 164 |
| | 1,568 |

Pursuant to chapter 549 of the Laws of 1880, fifty-nine crippled, blind, lunatic and other infirm alien paupers were, during the past year, removed to the countries whence they were sent, at a total expense of $1,514.42, being an average of $26.67 *per capita.* These persons had generally been dependent on public or private charity at home, and were destitute when landed on our shores. In every instance their shipment to this country was clearly traced to public authorities abroad, or to some society, guardian or friend. Probably not one of them would have become self-supporting, and the annual expense of maintaining them here at the moderate rate of $2.50 per week, would have been $7,670, aggregating a total expenditure of $115,000 for the balance of their lives, estimated at an average of fifteen years.

The constantly increasing number of insane persons is exhibited by the following statement of the number of inmates of the various State and local asylums, poor houses and private asylums for the past five years:

| | |
|---|---|
| October 1, 1881 | 10,059 |
| 1880 | 9,537 |
| 1879 | 9,015 |
| 1878 | 8,781 |
| 1877 | 7,921 |

The new asylum for the insane, located at Binghamton, has been brought into use during the past year, and already contains a considerable number of patients.

Complaint is made on behalf of the State Board of Charities, against the managers of the State Asylum for the Insane at Utica, for neglecting to report, as required by law, a detailed and classified statement of expenditures. Compliance with this statutory provision is essential to an intelligent comparison of the management of the several like institutions, and should be rigorously enforced. It is certainly not creditable to the officers of the Utica asylum that this plain duty has been so long disregarded.

### COUNTY JAILS AND POOR HOUSES.

The attention of the Legislature has for two years, been earnestly directed to the disgraceful condition of most of the county jails and poor houses, without securing, however, such legislation as the public interests demand. With few exceptions these institutions are discreditable to the communities responsible for their maintenance, and sadly injurious to the unfortunate classes committed to them. The commingling of the sexes, and the detention of young offenders in company with older and confirmed criminals, is obviously detrimental, and certain to result in the debasement of those who should be guarded from harmful associations while under the control of public officers.

True it is that county authorities are directly at fault for the continuance of these evils. But the State is also responsible for the well-being of its citizens; hence all the more should its authority be exercised for the protection of the weak and unfortunate. These abuses have continued for a long series of years; and unless some legislative action be taken that will insure local reforms, no adequate relief may be expected. Authority should be lodged with some State agency, by which unfit jails and poor houses can be condemned and the counties required to replace them with suitable structures.

## CRIME.

The frequency and atrocity of murderous assaults is an alarming feature of our times. Without investigation to prove the fact, there seems to have been, during the past year, a marked increase in the number of brutal homicides. Scarcely a day passes without the publication of some horrible tragedy, generally perpetrated on weak and defenseless persons. In much the larger proportion of instances these terrible deeds are directly traceable to habits of intemperance. It is lamentable in the extreme that such condition should exist in a period of unexampled prosperity, when, to all appearances, an unusual degree of comfort and contentment abides with the great mass of our population. The reasonable certainty of punishment in recent years demonstrated, seemingly fails to arrest the tide of brutality; and little satisfaction is experienced in contemplating remedial measures for its prevention. The subject is pregnant with grave importance, and should engage the most serious consideration of all thoughtful and law-abiding citizens.

## PARDONS.

The annual statement of pardons, commutations and reprieves, which will, in due time, be communicated to the Legislature, will show that the constitutional prerogative[c] has been exercised even more sparingly than during the previous year; and notably so in comparison with former years. Considerable reflection has enforced the belief that the pardoning power was not intrusted to the Executive for the purpose of interfering with or arresting the operations of law, either from motives of favoritism, or of pity. Should such considerations control, it would be difficult to put a bound to clemency; and the prison doors might constantly stand open.

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[c] Const. 1846, art. 4, § 5.

The Legislature, in its wisdom, has provided that convicts imprisoned for stated periods shall be entitled to commutation for good behavior. The operation of this humane law has produced marked effect in improving the conduct of prisoners, and raising the standard of discipline in the prisons. Beyond this merciful interposition it has not seemed wise to go, except in correcting what may be clearly shown to be errors of courts in the administration of justice; or when material evidence is produced on behalf of the prisoner, to the benefit of which he is apparently entitled, but which was not available on trial. Such view is taken on the assumption that clemency was placed in the keeping of the Executive to aid in the administration of full and exact justice, and not to prevent or defeat the just and righteous enforcement of the laws.

## IMPRISONMENT FOR DEBT.

Flagrant outrages against personal liberty by imprisonment for debt, are of frequent occurrence in the city of New York. Hundreds of persons are annually arrested and lodged in the county jail, and there detained until bail can be secured, which is generally difficult and often impossible for the unfortunate victims to obtain. Imprisonment for claims insignificant in amount are of no uncommon occurrence, and fifty to seventy-five prisoners are often held in detention under civil process at a time. Instances are by no means rare where individuals have thus been restrained of their liberty for several years before procuring release.

Imprisonment for debt was formally abolished by the statutes of this State many years ago; and it has long been the pride of our civilization that no citizen should be deprived of personal freedom except on a penalty for crime or misdemeanor. To the contrary, however, this theory is not made good in practice. The truth is known that citizens are far from secure; and as this condition of things affects more seriously the poor and friendless, all the more necessity exists for the correction of present abuses. Every consideration of humanity demands that these wrongs shall be promptly corrected by careful amendment of the laws now in force.

## INDIANS.

The gradual though constant decline in the moral and mental condition of the remnants of Indian tribes yet remaining in our State, is a subject of serious concern to intelligent citizens who have observed this unfortunate tendency. With all the opportunities for education and improvement within the reach of the young, there is little visible disposition to embrace the advantages extended; while prostitution and intemperance are making steady progress. The capacity of the Indian for education and cultivation has often been exemplified, and it seems unfortunate that, with all the privileges of our State for the improvement of the rising generation, this race of beings should be allowed to drift along in ignorance and increasing degradation. The continuance of the large reservations of land held in tribal interest, is believed to be detrimental to the material welfare of the Indians, for whose benefit they were set apart; and it seems desirable that practical investigation be undertaken to determine the feasibility of some change in policy, by severalty or otherwise, which may inure to the ultimate elevation of these wards of the State.[11]

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[11] By chapter 345, approved June 10, a commission was appointed to investigate the Onondaga Indians as to their moral and social condition, to negotiate a treaty between the State and the Indians and report the same to the next Legislature. The Commissioners were also required to consider the probable effect of a distribution of Indian reservation lands among the members of the tribe in severalty. The commission presented its report to the Legislature on the 13th of March, 1883. [See Senate Document No. 35.]

In 1850, chapter 89, annual provision was made for the instruction of ten Indian youth in the normal school at State expense. They were to be selected by the State Superintendent of Public Instruction from the various Indian tribes.

## STATE BOARD OF HEALTH.

The operations of the State Board of Health since its organization in the spring of 1880, have fully justified the wisdom of its creation. Influences harmful to health and destructive of life, in various portions of the State, have been either modified or abated. The intolerable nuisances formerly existing at Hunter's Point and vicinity, opposite New York city, have been almost entirely removed, to the comfort and satisfaction of the surrounding communities. Malarial diseases which prostrated hundreds of people along the lines of the abandoned canals, have also been controlled and good health restored. The organization of local boards of health has been greatly stimulated, with most useful results to the health of neighborhoods. In the general work prosecuted, it has been found that the statistics of the death rate in many localities are grossly defective, and it is believed that this can only be remedied by such practical amendments of the health statutes as will make the registration of deaths compulsory, and therefore, effective.

The State Board has much evidence to show that, while unusual healthfulness has continued throughout the year, certain contagious diseases, and also some preventable maladies not contagious, have caused a considerable number of deaths in various communities; and that, in each such instance, there was not at hand a competent local board of health, until the alarm of the inhabitants compelled action; whereupon the severity of disease was speedily checked and overcome. The inefficiency of the

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The consolidated school law of 1894, chapter 556, contained ample provision for the education of Indian children.

In 1900, by chapter 183, provision was made for the compulsory education of Indian children on the Allegany and Cattaraugus reservations. The provisions of the act were extended to the Onondaga reservation by L. 1901, chapter 188. These statutes were repealed and superseded by L. 1904, chapter 424, which provided for the compulsory education of Indian children on all reservations.

general drainage act is noted, and the necessity for some change in it is urged to meet new conditions, and remove prevailing diseases from many localities.

Some profitable attention might also be devoted to the subject of sanitary rules in the construction of houses. The neglect to observe a proper system of drainage, ventilation and plumbing, has caused much sickness and mortality, particularly in our large cities. Any building that breeds contagious or pestilential disease, whatever its character or use, should be regarded a public nuisance; and any person who knowingly maintains such place, or omits to remove the evil defects in structure or otherwise, should be held to a rigid accountability. Many people have, from necessity, to live in tenements, or hired houses, and their lives should be as secure as those who build and occupy their own residences.

## EMIGRATION.

Owing to the increased demand for labor, the number of immigrants arriving at the port of New York last year, was largely in excess of the year before. Statistics furnished by the Commissioners of Emigration show that 423,350 immigrants landed at Castle Garden from January 1 to December 10, 1881, making an increase of 114,804 over the same period the preceding year. It is estimated that the number will have increased to 440,000 by the close of the year, which will be the largest annual arrival since the organization of the Board of Emigration.

The number of arrivals during each of the last ten years was:

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|---|---|
| 1872 | 294,581 |
| 1873 | 266,818 |
| 1874 | 140,041 |
| 1875 | 84,560 |
| 1876 | 68,264 |

| | |
|---|---|
| 1877 | 54,536 |
| 1878 | 75,347 |
| 1879 | 135,070 |
| 1880 | 327,371 |
| 1881, say | 440,000 |

Although the larger proportion of this immense volume of immigration was composed of a superior character of persons, comfortably provided with means to care for themselves, yet a large number of sick and destitute have been sheltered and treated in the State Emigrant Hospitals under the care of the Commissioners, and 611 inmates still remain, including 149 insane.

The Commissioners report that notwithstanding they have exercised the strictest economy in the administration of their trust, the appropriation for the current year will prove insufficient for the support of the department, and will be quite exhausted by the first of February. They, therefore, urge the immediate appropriation of $40,000 to provide for the balance of the year.

Nothing has yet been realized from the steamship companies, as authorized by chapter 432 of the Laws of 1881, for the payment of expenses in administering the inspection law.[d] This law and the impost imposed for its execution have been the subject of discussion with the steamship companies; but arriving at no satisfactory adjustment, the Commissioners have found it necessary to commence suit to enforce the provisions of the statute.[12]

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[d] This act was held unconstitutional in New York v. Compagnie General Transatlantique (1882), 107 U. S. 59; People v. Edye (1882), 11 Daly 132.

[12] Chapter 10, passed March 2, 1882, appropriated $40,000 for the current expenses of the commissioners of emigration.

Chapter 145, passed May 12, authorized the commissioners to contract with the carriers of emigrants by vessel to the port of New York, for periods not exceeding five years at a time, to receive not less than fifty cents nor more than one dollar for each alien passenger so brought for such inspection and care, which payments, when made, shall be in lieu of any tax by the State for the inspection and care of such passengers.

## QUARANTINE.

Notwithstanding the immense increase of immigration, and a larger number of arrivals from infected ports, the efficiency of the quarantine establishment at the port of New York has completely prevented the introduction of contagious diseases by incoming vessels. During the early months of the year small-pox was unusually prevalent among alien passengers from various European ports, and much apprehension existed lest infected persons might pass quarantine while the disease was still latent, but which might develop among distant interior communities. Conference with the agents of passenger lines resulted in such precautionary measures as averted apprehended danger. The freedom of the State from infectious diseases, the expressed satisfaction of ship-owners and merchants with the administration of the health officer, and the security felt by the people, are gratifying evidences of the success of quarantine officials in discharging the important and difficult duties devolving upon them.

## HARBOR MASTERS AND PORT WARDENS.

The attention of the Legislature has heretofore been directed to the fact, that the Supreme Court of the United States having declared the provision embraced in the statute of this State regulating the duties of harbor masters, which authorizes them to collect fees in compensation for their services, unconstitutional, these officers are left without legal remuneration for services which they are still

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By chapter 281, approved June 5, the commissioners were authorized to exclude from the benefits of the State emigrant institutions at Castle Garden and Ward's Island, "such steamship companies as will not contribute toward the maintenance of said institutions."

Another act, chapter 385, approved July 1, appropriated $200,000 for the expenses of the commissioners including $50,000 to be used exclusively for the repairs and improvement to the property belonging to the State.

Chapter 145 was held unconstitutional in New York v. Emigration Comrs. (1891), 36 N. Y. S. R. 721.

required by law to render.[*] The magnitude and importance of the commerce of the port of New York require the constant attention of officers authorized to regulate and control the movement of vessels; and so long as the harbor masters are continued in the discharge of these duties by the State, it is essential that they be compensated in conformity with law. Necessity also exists for legislation in regard to the jurisdiction and authority of port wardens, which have been made somewhat uncertain by the decision of the courts.

## EXCISE LAWS.

The manifest inadequacy of the laws for the regulation of the liquor traffic must be a cause of regret to all good citizens. Licenses are granted to hundreds and thousands of parties pretending to be hotel keepers, whose sole occupation in the way of public entertainment, consists in selling liquor; while in a still greater number of instances liquor is sold openly and boldly without license. Such common and contemptuous defiance of law is a standing reproach to the dignity and peace of the State, and ought, by every consideration of decency and morality, to be rebuked and repressed.

The evils resulting from the sale of liquor, even within the pale of the law, are bad enough, and always to be deplored; but the degradation and ruin resulting from the wholesale violation of law and order is lamentable in the extreme. Crimes most wicked and revolting, of almost daily occurrence, are attributable, in nearly every instance, to the bane of intemperance. All hope of relief from this unfortunate condition of affairs depends on judicious and effective amendments to the present laws. The highest interests of public well-being demand attention to this subject, and without causeless delay.

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[*] See Inman S. S. Co. v. Tinker (1876), 94 U. S. 238.

## LOTTERIES.

Although for sixty years the Constitution has prohibited lotteries and the sale of lottery tickets in this State,[f] and laws have been duly enacted for the purpose of enforcing such prohibition, it is notorious that the nefarious traffic still continues to flourish in the larger cities to an alarming extent. Especial efforts have been made during the past two years to impress prosecuting officers with the importance of greater vigilance in the discharge of their duties respecting this gross infraction of both constitutional and statutory law. Unfortunately, however, these efforts, with but few noteworthy exceptions, have not as yet produced satisfactory results. Penalties for the violation of these enactments should be made more severe, and the duty of various officers of the law made more specific and imperative. With an unrestricted constitutional prohibition for remedial laws to rest on, no effort should be spared to stamp out this defiant and shameful transgression of the authority of the State. The subject is worthy of consideration, and will doubtless commend itself to your attention.

## MUNICIPAL AFFAIRS.

The gratifying result of last year's legislation in relation to the city of Brooklyn, effecting the complete overthrow of the political dynasty that has so long ruled the affairs of that important city to its serious detriment, affords encouragement for further efforts to relieve the city of New York of onerous burdens fastened upon her taxpayers by past legislation. In 1880 an act was passed giving partial relief in this regard, and it should be supplemented still, by a further reduction of extravagant salaries and the abolition of needless offices. It is a notorious fact that the rate of compensation allowed many officials in the city of New York is far above that paid by private employers or business corporations, for like services; and while it may not be possible to secure the same economy in public expenditures as in ordinary business affairs, it is certainly practicable to approach much nearer a reasonable standard than now exists. Extravagance in the expenditure of public funds is wholly unjustifiable, and responsibility is quite as great for duties neglected as for acts performed.[13]

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[f] See Const. 1821, art. 7, § 11; 1846, art. 1, § 10.

Although the subject of water supply for the city of New York may be regarded as a local question, yet the fact that the metropolitan city contains one quarter of the population of the entire State, and that the continued prosperity of that city is a matter of deep interest to all citizens, warrants some reference in this connection.

At the last session of the Legislature a bill was passed for the construction of an additional aqueduct from Croton lake to the city of New York, which, although strenuously advocated by the officers of the Croton water department, was opposed by many citizens protesting against its provisions, and it failed to receive my approval for reasons stated at length in the message accompanying its return.* The occurrence during the past autumn, of a drought of unusual length and severity, causing an actual scarcity in the supply of Croton water for quite a period, and producing consequent uneasiness and alarm to residents of the city, renders it proper that careful and intelligent inquiry be made that shall definitely determine the necessity of larger facilities, and the most feasible method for additional water supply. Affecting, as it does, the comfort and well-being of the entire population of the city, and involving the prospective expenditure of many million dollars, the suggestion is renewed that so important a question should be submitted to a commission of inquiry, to be composed of a number of the most eminent citizens of New York, whose report would command confidence and carry conviction to the community interested, as well as to the Legislature. Prompt action can secure such report in ample time for final disposition of the subject during the present session.

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[13] A new charter for New York was enacted at this session, chapter 410, known as the Consolidation Act. For decisions relating to New York charter, see 1872, *ante*, vol. 6, p. 519.

* See *ante*, p. 593.

Should it ultimately be considered wise to undertake the construction of a new aqueduct, the inevitable expenditure of twelve or fifteen million dollars, and possibly more, makes it highly desirable that the enterprise shall be securely placed in such hands as will insure its prosecution in a strictly business like manner, in order that the utmost economy shall be observed compatible with the early completion and permanent character of the work. Every precaution should be taken to prevent a public improvement of such magnitude being placed under a direction which, by any circumstance, is liable to be influenced by political considerations.

In recent years the city of New York has suffered outrageously from profligate administration, or downright robbery, in the construction of public works. With such grievous experience yet fresh in memory, it would be inexcusable to inaugurate a new and necessarily costly enterprise under a management that, by any possibility, could be tempted to wasteful practices in the conduct of its affairs. Nothing short of an absolute divorce from all political manipulation will avoid the danger apprehended.

## INTERNATIONAL EXPOSITION.

Although the question was considerably agitated some months ago, with reference to the organization of an international exposition, to be held in New York in 1883, all discussion, if not interest in the subject, has for the time being, been abandoned; and apparently every effort to accomplish the purpose has ceased. Probably the interval of time is now too limited to make adequate provision for such an enterprise to take place as originally proposed; but considering the manifest variety of advantages to be derived from a successful exposition, which should attract the attention and co-operation of all nations, it seems highly desirable that consideration of the subject be renewed, for a later date; and that, if possible, it be put in early progress. The experience of Philadelphia, in bringing to her midst, in 1876, representatives of the entire civilized world, thus inducing every country to become patrons of her industries, was such as clearly to prove to all observers the extraordinary benefits that flow from such exhibitions. While, perhaps, in the present tide of prosperity, the merchants and manufacturers of New York do not feel the need of such stimulus, yet the time may come in the mutations of business affairs, when such benefit to their patronage as would surely inure from an international exposition, will be eagerly welcomed.

## MONETARY DISTURBANCES.

The recurrence at frequent, though irregular, intervals of violent disturbances in the money market of the chief financial emporium is a matter of serious public concern. Commissions of one-sixty-fourth, one-thirty-second and one-sixteenth per cent are often paid for a single day's use of money, in addition to the legal rate of interest; while, indeed, it has not been uncommon to demand an eighth or even a quarter of one per cent. These extraordinary rates for the use of capital have been more frequent during recent years when the current rates of interest have been extremely low; and more especially since the reduction of the legal rate in this State. Violent and unnatural stringencies in monetary affairs affect not only business interests in the cities, but the farmer and manufacturer as well, in consequence of the influence on the price of all standard commodities and products.

The cause of these oft-recurring troubles is generally attributed to the influence of the usury laws of this State, which almost alone, among all States and Nations, adheres to the confiscation of principal and interest as the penalty for usurious exactions. When quotations for the use of money in New York run up to a quarter per cent a day — being equivalent to ninety-six per cent a year — the ruling rate in Boston is usually seven or eight per cent; while nine per cent per annum is an extreme rate in that city. Massachusetts long ago repealed her laws imposing severe penalties for usury, and substituted therefore a merely nominal penalty. The difference in the rates of interest that rule respectively in Boston and New York, at periods of severe contraction, is regarded as affording the best argument for the modification of our statutes. The volume of financial transactions in the city of New York, by fully three-quarters in amount from borrowed capital, is conducted on loans payable on demand and secured by collaterals. Even if it were considered unwise to change the usury laws as applied to time loans, there can hardly be doubt of the wisdom of modifying them so far as relates to demand loans. Such amendment would afford marked relief to the great bulk of commercial operations, and would leave undisturbed the present usefulness of the laws in protecting the interests of ordinary or occasional borrowers depending on accommodations for fixed periods of time.[14]

## STATE BOUNDARY LINES.

The duty of examining and restoring the monuments marking the boundary lines between the States of New

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[14] Chapter 237, passed May 30, provided that on advances of money "upon warehouse receipts, bills of lading and certificates of stocks, certificates of deposit and other negotiable instruments, pledged as collateral security for such repayment, it shall be lawful to receive or contract to receive and collect, as compensation for making such advances, any sum to be agreed upon, in writing, by the parties to such transaction."

York, Pennsylvania and New Jersey, which on the part of this State was delegated to the Regents of the University by the Legislature, has been in process of accomplishment during the past year. After conference with the authorities of the States concerned, satisfactory arrangements have been made for the restoration of the missing monuments. A portion of the work on the Pennsylvania line has already been completed; and provision has been made for finishing the entire work within the next season.[15]

## THE ADIRONDACK SURVEY.

Commendable progress has been made in the survey of the Adirondack region heretofore authorized by the Legislature. An important permanent basis for all leveling work in the northern counties has been made the past season, by the location of a line of geodetic levels, carried northward from Albany through two degrees of latitude, and forming, in connection with the United States surveys, a continuous line of reference levels with monuments from New York harbor to the Canadian frontier. Valuable work has also been accomplished under the direction of the Superintendent of the Adirondack survey in relocating the boundary lines of Essex, Franklin, Hamilton, Herkimer and Lewis counties. Evidences of former surveys were generally extinct, and in one instance, every vestige was obliterated for a distance of thirty-five miles. Township lines were also found to be in great confusion, rendering assessments for taxation difficult, and causing much embarrassment in the collection of taxes. Provision should be properly made for the location and permanent marking of these obscure and missing lines, so as to avoid constantly recurring difficulties, both as to local jurisdiction and the ownership of adjacent lands. The reports of the Adirondack survey have been largely sought by the public, and in authorizing future publications it may be well for the Legislature to consider the practicability of having them placed on sale. It is not unlikely that the expense of publication would be partially, if not wholly met, by this means.[16]

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[15] Authority to establish the boundaries between this State and New Jersey and Pennsylvania was conferred on the Regents of the University by a Senate resolution adopted in 1867 and also by chapter 424 of the Laws of 1875.

## THE NORTHERN WILDERNESS.

Pertinent to matters relating to the survey above referred to, is a subject suggestive of practical observation in regard to the northern wilderness. The vast tract of country lying in the northern part of the State, familiarly known as the Adirondack region, has become one of the most inviting resorts to invalids and tourists. Its high altitudes, pure and bracing atmosphere, perennial streams and mountain lakes, in the shade of primeval forests, constitute the desirable features of a retreat designed by nature for the uses of mankind in pursuit of health or pleasure. But there are other and grave interests belonging to this portion of our territory that appeal with especial force for timely consideration. By far the greater quantity of land within the Adirondack wilderness proper belongs to the State. Individual ownership is now confined to a few hundred thousand acres. Heretofore it has been the practice of the State, with questionable policy, to sell its wild lands, at nominal prices, to private parties, who have gone on, in most cases, and cut off the marketable timber where accessible, and then abandoned to the State the clearings, worthless generally for agricultural purposes; thereby escaping the payment of taxes. Forest fires have followed and raged with destructive fury, denuding the mountains and checking the flow of springs and streams that supply the navigable waters to the north, and the Hudson river southward. Furthermore, many of the lakes, the natural reservoirs of the mountain courses, have been damaged by dams and overflow, so that the shores of those lying within the working timber limits present the effects of irreparable injury. It has, therefore, become a question of serious import whether the State should any longer part with its title to land in this quarter, now held or that may hereafter revert by the non-payment of taxes. It might be leased, perhaps, with safety, for certain purposes; but its uses should be carefully restricted.

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[16] Chapter 270 appropriated $10,000 for continuing work on the Adirondack survey.

The Adirondack region is the natural and principal watershed of important navigable waters, and, if it be divested of its timber, imminent danger will threaten. The rain-falls will diminish, the springs and streams fail, and unaccountable loss ensue to interests not immediately located in that part of the State. This subject will, indeed, sooner or later, demand inquiry, if its importance do not now compel investigation.[17]

## THE PENAL CODE.

The bill to establish a Penal Code, adopted by the last Legislature, was received at the Executive Chamber only one day prior to final adjournment, and therefore too late for suitable opportunity to examine its provisions during the remainder of the session. Careful examination thereafter revealed several features that obviously require amendment; and if observed in time, would have been promptly indicated in order to obtain further consideration during the late session.

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[17] An act passed in 1872, chapter 848, created a commission composed of Horatio Seymour, Patrick H. Agan, William B. Taylor, George H. Raynor, William A. Wheeler, Verplanck Colvin, and Franklin B. Hough to inquire into the expediency of providing for vesting in the State the title to the timbered regions lying within the counties of Lewis, Essex, Clinton, Franklin, St. Lawrence, Herkimer and Hamilton, and converting the same into a public park, and report at the next session.

The commission presented its report on the 15th of May, 1873, recommending that the State take measures to protect and preserve the forests of the Adirondack region, and that this territory be set apart as a public park. Further consideration of this subject will be found in subseouent messages, documents and statutes.

The date fixed for the Code to take effect on May 1, 1882, is, however, sufficiently remote to enable the Legislature to review the subject before the Act becomes operative. On account of the general merits of the measure, which was cordially approved by the legal profession as furnishing a valuable supplement to the criminal statutes, it appeared wise on the whole when the bill came from the Legislature, to complete its enactment, and rely on subsequent amendments to remove all objection. Your attention, therefore, is called to the subject, with a view of perfecting the Code in conformity with the best judgment.[18]

## CONTESTED ELECTIONS.

At every session of the Legislature, bills are introduced, and not infrequently passed, providing for the payment of claims made by persons who have succeeded to office after contesting title to the same, in cases where the ousted parties have drawn the salaries during the time they held possession. It is only just that the one elected to an office should enjoy its emoluments; but the salary ought not to be paid twice over, or to different claimants. Some plan should, therefore, be adopted whereby persons legally chosen shall be protected in their rights.

A very effective remedy for what has become a growing evil, would be to require in the case of a contested election, whether general or local, that the contestant be allowed to file with the appropriate disbursing officer a protest against payment of salary to the person who has received the certificate of election, and that the filing of such protest shall prevent payment until the incumbent furnish an adequate bond of indemnity, for a refund of the amount paid, in case the contest be decided adversely to the party holding. This would involve no unreasonable exaction or hardship to the incumbent, while it would provide against possible injustice to the contestant. The subject is one worthy of attention, and your intelligent consideration is respectfully directed to it.

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[18] Chapter 102, passed April 28, 1882, postponed the time when the Penal Code should take effect from May 1, 1882, to December 1, 1882, and various amendments to the Code were made by chapter 384, approved June 30.

### BRIBERY AT ELECTIONS.

The true theory of a republican form of government involves perfect integrity in the conduct of elections. The most dangerous enemy of free institutions is a corrupt ballot; and if government by the people ever prove a failure it will be more likely to proceed from this cause than any other. Citizens are justly indignant when frauds are committed, falsifying results, and, in effect, depriving them of the elective franchise. Carefully matured laws have been enacted to guard against these evils, and it is believed that many abuses formerly practiced have been abated. The bribery of voters, however, for which offense both the Constitution[s] and laws provide severe penalties, is yet too common, and should be sternly rebuked.

In certain localities of the State not an election occurs, without the expenditure of large sums for the purchase of votes, and not unfrequently fabulous amounts are thus expended to control local elections. Worse than this, no pains is taken to conceal these long established crimes from the public view; and they are often so notorious as to become the subject of neighborhood scandal. Prosecuting officers are sadly derelict in failing to invoke the majesty of the law so wantonly and flagrantly defied under their very eyes; for none can be so blind as not to see, or procure the evidence of these occurrences.

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[s] Const. 1846, art. 2, § 2, am. 1874.

Unless some power intervene to put a stop to this monstrous abuse, it will inevitably grow until elections controlled by such interests as command the largest means, will become a mere farce. If such condition is reached, respect for law will be turned to contempt, and the liberties of the people endangered. Impressed with the vital necessity of checking this growing vice, you are urged to consider and adopt whatever measures may promise relief, and especially to promote vigor and efficiency among officials upon whom the responsibility of prosecution rests.

### CONGRESSIONAL REPRESENTATION.

Pursuant to the Constitution of the United States,[h] a reapportionment of congressional district representation to conform to the census of 1880, will become necessary during your present session, provided Congress shall have completed its duty in determining the basis of representation for the several States. Unless the membership of the House of Representatives as now composed, be considerably enlarged, our State will, of necessity, lose somewhat in the number of its representatives, in consequence of the relative increase in the population of other States, as established by the census; hence reorganization of congressional districts will become an absolute requirement whenever Congress shall have fixed the ratio of representation.[19]

### ARMS OF THE STATE.

The doubt and uncertainty as to what is the correct device of the arms of the State, although not affecting our material welfare, certainly reflect upon the boasted cultivation and pride of our people. A commission designated by the Senate last year carefully investigated the subject and submitted a report to the Legislature, affording full information as to the confusion surrounding this question; and making a proper solution in a specific definition of a device, with provision recommended for an authentic exemplification thereof, to be adopted and alone used for all official documents, and letter headings, as well as for every purpose for which it may, with propriety be employed; thus making it familiar to all. The fact that nearly one hundred different devices are extant, and that not a single person within the State is able to prove what is the true and legal design, is quite sufficient to demonstrate the desirability of some authoritative disposition of the matter.[20]

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[h] U. S. Const. art. 1, § 2, clause 3, 14th am. § 2.

[19] Chapter 424, passed May 16, 1883, divided the State into 34 congressional districts.

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[20] The act to "further organize the government of this State," passed March 16, 1778, chapter 12, recited among other things that the arms of the State had been devised and also a great and privy seal, and provided for the custody of the seals and the use thereof, on various documents, but the act did not describe the arms.

Adopting Governor Cornell's suggestion, the Legislature of 1882, passed on the 20th of May, an act, chapter 190, "to re-establish the original arms of the State of New York, and to provide for the use thereof on public seals." The act contained the following provision:

"The device of arms of this State as adopted March sixteenth, seventeen hundred and seventy-eight, is hereby declared to be correctly described as follows

CHARGE. Azure, in a landscape, the sun in fess, rising in splendor, or, behind a range of three mountains, the middle one the highest, in base, a ship and sloop under sail, passing and about to meet on a river, bordered below by a grassy shore fringed with shrubs, all proper.

CREST. On a wreath, azure and or, an American eagle, proper, rising to the dexter, from a two-thirds of a globe terrestrial showing the North Atlantic ocean with outlines of its shores.

SUPPORTERS. On a quasi compartment formed by the extension of the scroll.

DEXTER. The figure of Liberty proper, her hair disheveled and decorated with pearls, vested azure, sandaled gules, about the waist a cincture or, fringed gules, a mantle of the last depending from the shoulders behind to the feet, in the dexter hand a staff ensigned with a Phrygian cap or, the sinister arm embowed, the hand supporting the shield at the dexter chief point, a royal crown by her sinister foot dejected.

SINISTER. The figure of Justice proper, her hair disheveled and decorated with pearls, vested or, sandaled, cinctured and mantled as Liberty, bound about the eyes with a fillet proper, in the dexter hand a straight sword hilted or, erect, resting on the sinister chief point of the shield, the sinister arm embowed, holding before her her scales proper.

MOTTO. On a scroll below the shield argent, in sable, EXCELSIOR."

The act required the use of such seals on public documents after January 1, 1883. The device of the arms, according to the foregoing description, was

## CONSTITUTIONAL AMENDMENTS.

Propositions for amending the Constitution in several respects were adopted by the last Legislature, and will, therefore, come before you this session. Those with reference to the canals are especially timely in view of possible developments in the near future, affecting this important interest. [See note 3.] The proposed amendment for further restricting the authority of counties, towns, cities and villages to contract local indebtedness, must, in view of past experience, commend itself to the approval of the people. As to the increase in the number of Justices of the Supreme Court, there may be some question about its necessity in the Fourth and Sixth Districts; and also, the addition of more than one Justice in the Seventh and Eighth Districts, respectively.

However, as the question of amendments to the organic law is within the province of the Legislature, and the electors of the State, when not remitted, so far as the Legislature is concerned, to a duly constituted convention, the subjects detailed, rest with such authority, and must thereby be determined.[21]

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to be painted in colors and hung on the walls of the Executive Chamber, Senate and Assembly Chambers, the room occupied by the Court of Appeals and the office of the Secretary of State, and the act prohibited the use of any other pictorial device.

The foregoing description of the arms was re-enacted in the State law, L. 1892, chap. 678, section 40, but the act of 1882 was not specifically repealed.

The State flag law of 1896, chapter 229, continued the same description of the arms, except that the sentence relating to the figure of Justice was stated as follows:

> "SINISTER. The figure of Justice proper, her hair disheveled, and decorated with pearls, vested or, about the waist a cincture azure, fringed gules, sandaled and mantled as Liberty, bound about the eyes with a fillet proper, in the dexter hand a straight sword hilted or, erect, resting on the sinister chief point of the shield, the sinister arm embowed, holding before her her scales proper."

[21] See note 3 for canal amendments.

A concurrent resolution was adopted at this session proposing an amendment to article 8, section 11, relating to local indebtedness, prohibiting, as to certain municipalities, an indebtedness in excess of ten per cent. of the

## BIENNIAL LEGISLATIVE SESSIONS.

The experience of two years in the discharge of executive duties has impressed me with the belief that the interests of the people would be promoted by the adoption of the plan for biennial sessions of the Legislature. Provision for the support of all departments of the State government can be made two years in advance, quite as well as for a single year; and under the present constitutional authority with reference to extraordinary sessions of the Legislature, during which no subject can be considered not embraced in the recommendations of the Governor,[1] no embarrassment need arise about calling such extra meetings whenever necessity demands.

This policy would undoubtedly contribute to greater stability and efficiency in regard to laws; and would check in large degree the tendency to local and special legislation now encouraged. The attention of the Legislature would more likely be devoted to the consideration of general measures designed to conserve the public good, thus elevating the law-making power in the estimation of the people, and inducing greater respect for statutory enactments. The last revision of the Constitution provides for general legis-

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assessed valuation of real estate. This amendment was approved by the people in 1884.

The Legislature of 1882, by chapter 343, approved June 10, submitted to the people a proposed amendment to the Judiciary article adding a new section 28, providing for five general terms of the Supreme Court, and authorizing the election of not more than twelve additional justices of that court. The amendment was approved.

The Legislature also adopted a concurrent resolution proposing an amendment to article 8, section 9, relative to cities and villages, prohibiting the Legislature from passing any local bill affecting the organization and government of cities, guaranteeing to cities a republican form of government, requiring city officers to be chosen by the people or appointed by the Mayor, and providing in certain cases that a proposition for the creation of a debt or for a public improvement be submitted to the people for approval. The amendment was not adopted again.

[1] Const. 1846, art. 4, § 4.

lation on many subjects;[j] and there can be no doubt that more beneficial results in this respect would accrue if the sessions were less frequent. Several States have in recent years, changed from annual to biennial meetings, with especial advantage and satisfaction to the people.

To accomplish the object proposed, amendments to the Constitution will be required, both as to the legislative sessions[k] and the term of service of the members.[l] The Assembly should be chosen for two years; and if thought advisable the term of Senators might with advantage, be also lengthened. The adoption of such amendments as would meet the favor of one Legislature, would doubtless elicit discussion and consideration by the people that would furnish an intelligible guide to a succeeding Legislature in its action on the final deliberation to which the proposition would necessarily be subjected.

## CONCLUSION.

Having thus, in obedience to the Constitution, communicated to you the condition of the State, permit me, in conclusion, to express my sincere desire cordially to co-operate with you, in all harmony, for the perfection of every measure designed to advance public interests, and correct existing wrongs. The responsibilities which you have assumed cannot be over-estimated. The oath you have taken will not rest lightly, with duties neglected, or trusts abused. Statutes affecting the government of the greatest of States in the Union cannot be too carefully considered. Constant, unselfish and patriotic devotion to the duties awaiting you is essential to the honorable discharge of the obligations involved. May the Ruler of Nations inspire you with wisdom adequate to the performance of your trust, and acceptably to the great constituency which you represent; that your work may redound to His glory, and to the honor and welfare of the people of this majestic Commonwealth.

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[j] Const. 1846, art. 3, §§ 18, 23, am. 1874.

[k] Const. 1846, art. 10, § 6.

[l] Const. 1846, art. 3, § 2.

ALONZO B. CORNELL.

## SPECIAL MESSAGES.

January 18. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *January* 18, 1882.

"The occurrence of another railway accident by which the lives of eight persons were sacrificed, and many other passengers more or less injured, recalls the importance of more effectual safeguards against these oft-recurring calamities. By this deplorable event the Senate is called to mourn the loss of its senior member; a man who was, in every relation of life, most highly esteemed; whose successful business career had made his name familiar throughout the country; and whose sad death is universally lamented.[22] The tragic fate of your late associate, and the fact that the lives of many members of both branches of the Legislature were imperiled in that frightful casualty, are calculated to impress on your minds, with peculiar force, the vital and urgent need of prompt consideration of the subject of railroad disasters, and the means to prevent them.

That an accident that could have been so easily prevented, and which was, therefore, absolutely inexcusable, could occur on the line of the chief railway of this State, and within the corporate limits of the great metropolis, demonstrates most painfully the importance of some careful statutory provision with adequate penalties, to enforce obedience and responsibility in all necessary precautions for the conduct of railways. When we consider that the safety of 150,000 passengers who daily patronize the several railroads within this State depends on the prudent and vigilant management of these great highways of travel, we may in some degree appreciate the magnitude of the question under consideration.

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[22] The Governor here referred to Webster Wagner, a member of the State Senate, who lost his life in the Spuyten Duyvil disaster on the Hudson River Railroad, on the 13th of January, 1882.

The managers of the road had, with commendable prudence, adopted a rule for the government of their employes, in similar cases, which they deemed adequate for protection. Unfortunately, however, its execution devolved, in this emergency, on the action of one human being. Whether the failure in this instance was due to culpable negligence, or to the mistaken judgment of the signal-man, it is quite unnecessary here to consider. Absolute safety demands that a duty of such supreme importance to so many persons should have for its execution the concurrence of at least two different persons. Aside from the question of watchful and diligent endeavor to perform the duty, it is easy to see how a single person might be accidentally disabled, and thus prevented from arresting the progress of an approaching train.

Certain rules with reference to the running of railway trains are indispensable to the safety of passengers; and faithful performance under such rules is quite as vital to the welfare of the community as the due observance of the laws of the State in other matters. It seems obvious, therefore, that such general regulations as are applicable to the safe and prudent direction of railroads should be enacted into statutes, with suitable provision of penalties both as against the companies and the individual officer or employee on whom the obligation of duty rests. Neglect or violation of these prudential methods is frequently, and notably in the recent instance, a crime meriting severe punishment, which existing statutes do not sufficiently provide. Whatever will tend to stimulate the vigilance and enforce the responsibility of railway officials, and, furthermore, to increase the efficiency and watchfulness of individual employees, will just so far promote the comfort and safety of the multitudes of people who travel by rail.

The present means of heating and lighting railway cars is also a standing menace to the lives of passengers, while little if any care is taken to guard against the ravages of fire, so frequently occurring, and thus adding to the horrors incident to collisions and other violent accidents. Hundreds of persons stood helpless by the burning train at Spuyten Duyvil; but would gladly have rendered assistance if provided with proper weapons to combat the flames. Without such requisites they were powerless to rescue the imprisoned passengers, or prevent the disfigurement by fire of those already dead. Trains should be required by law to be supplied with all available appliances for breaking into wrecked cars, and for the extinguishment of fire.[23]

ALONZO B. CORNELL."

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[23] A board of railroad commissioners, composed of three members, was created by chapter 353, approved June 16, which contained detailed provisions relative to the organization and powers of the board. The act was afterwards included in the railroad law of 1890, chapter 565. In 1905, by chapter 728, the number of commissioners was increased to five.

An act passed in 1884, chapter 439, "for the better protection of life and property upon the railroads of this State, to promote the safe and better management of steam railroads," required the use of safety switches, automatic air brakes or other safety brakes on passenger cars, and also required certain tools to be carried in a convenient place in each passenger car.

In 1887, by chapter 616, railroad companies were prohibited from using stoves or furnaces for the purpose of heating passenger cars.

L. 1884, chapter 439, section 3 (gates at street crossings) was sustained in People v. Long Island R. Co. (1892), 134 N. Y. 506.

L. 1887, chapter 616, amended 1888, chapter 189 (heating passenger cars), was sustained in People v. New York, N. H. & H. R. R. Co. (1890), 55 Hun, 409, affirmed 123 N. Y. 635; New York, N. H. & H. R. Co. v. New York (1896), 165 U. S. 628, affirming 142 N. Y. 646.

January 19. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *January* 19, 1882.

"Herewith is transmitted for your information the report of the commission for the reception of the national guests, designated pursuant to Senate resolutions adopted June 21, 1881, in words following:

## STATE OF NEW YORK:

IN SENATE,
ALBANY, *June* 21, 1881.

*Whereas,* The State of New York, during its long occupation of its chief city, was, for a long period, notably in the summer of 1781, and the fall of 1782, protected and succored by the troops which France, the ally of the United States, sent to their assistance; and,

*Whereas,* After the victory of the allied forces at Yorktown, the city of New York remained for a period of more than two years in the occupation of the British troops; and, in the disorganized condition of the State, no opportunity was permitted to it to express its recognition of the services rendered by the French in protecting its soil and obtaining it deliverance; and,

*Whereas,* In response to an invitation of the Congress of the United States, the French government has signified its intention of sending a delegation to represent it at the laying of the corner-stone of the monument to the alliance on the ground of the victory, therefore,

*Resolved,* That his Excellency the Governor be, and hereby is, directed and authorized to extend the courtesies of the State of New York, in such manner as he may deem wise and proper, to the delegation of the French government, the family of Lafayette, and the descendants of the Marquis de Rochambeau, the Count de Grasse, and of such other general officers of the French army and fleet who served in the Yorktown campaign, as may visit the United States during the present summer; and it is further

*Resolved,* That his Excellency the Governor be, and hereby is, empowered to call to his aid such of the citizens of the State as he may select to assist in the reception and entertainment of these honored guests, and he is hereby authorized to draw his warrant on the Treasurer of the State for such moneys as may be required for the purposes of this resolution.

By order,
JOHN W. VROOMAN,
Clerk.

Although the resolutions in terms authorized the Governor ' to draw his warrant on the Treasurer of the State for such moneys as may be required for the purposes of this resolution,' no appropriation having been made for the purpose specified, there was no money available to defray expenses; and it did not appear proper to me, in view of that fact, to authorize any expenditure on behalf of the State. Accordingly, therefore, fifteen citizens, residing in New York city and vicinity, were designated and requested to serve as a commission of reception. They were at the same time expressly notified that no liability against the State could be authorized.

The commission thus appointed consisted of the gentlemen named, as follows: John A. King, Frederick W. Seward, Hamilton Fish, Jr., William W. Astor, Cornelius Vanderbilt, Robert Ray Hamilton, William Jay, Lloyd Aspinwall, Horace Russell, Alfred C. Barnes, James M. Varnum, Francis C. Barlow, John Austin Stevens, Robert E. Livingston, William Rhinelander Stewart.

The commissioners cordially and promptly accepted the duty intrusted to them, and devoted themselves assiduously to its discharge, which was accomplished in a manner alike honorable to the State, in whose name they acted, and creditable to themselves as citizens. Indeed, it is becoming to say that their action was in the highest degree worthy of the great State whose hospitalities they were directed to extend to the distinguished guests; and it is my especial desire to bear testimony to their service, so zealously and efficiently rendered in true public spirit. Besides much time devoted by the commissioners, they personally contributed several thousand dollars for the payment of hotel bills, carriage hire, and other expenses, so that neither for maintenance nor travel were the national guests allowed to expend a single dollar within the borders of our State.

Certainly it was not contemplated by me, in naming the commissioners, that they should assume the burden of such outlay; but, as they conceived it to be proper to take it upon themselves, in order to carry out the spirit of the resolutions, it would seem but just that the State should promptly reimburse them. It is, however, due to them to apprise you that several of the commissioners stated to me that the expenses were incurred without expectation of return, and that they did not desire it. Moreover, two of them, at least, have requested that no recommendation looking to their reimbursement should be made. It would, nevertheless, be manifestly improper to allow private citizens to defray the expense of entertaining, on behalf of the State, guests coming from abroad in the capacity of national representatives on the invitation of the general government, to be present at the centennial celebration of the triumph of the allied forces at Yorktown. It is, therefore, recommended that suitable appropriation be made to enable the Comptroller to reimburse the commissioners for such expenditures as have been properly made by them.[24]

## YORKTOWN CENTENNIAL.

It seems appropriate, in connection with the foregoing subject, to make brief reference to the representation of the State at the celebration of the centennial anniversary of the surrender of the British forces at Yorktown last October. Congress appropriated $100,000 for the erection of an imposing monument on the historical ground where the surrender occurred, and provided for a becoming observance of the centennial celebration, to include the laying of the corner stone of the projected monument. The general arrangements were intrusted to a committee composed of Senators and Representatives in Congress. Invitations were extended to the French government, and to the several States, requesting formal representation on the occasion; and, also, to the descendants of the principal officers of the allied armies. France formally accepted the invitation, and sent a deputation of nearly forty persons, about one-half of whom were lineal descendants of Lafayette, de Rochambeau, de Grasse, and other illustrious officers who participated in our Revolutionary struggle.

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[24] The supply bill, chapter 362 (1882), appropriated $4,500 for the expenses incurred by the Yorktown centennial commissioners in the reception and entertainment of the national guests.

The celebration began on the 18th of October, lasting three days, and was a successful demonstration. Among those present were the President and Cabinet, prominent officers of the army and navy, many of the Senators and Representatives in Congress, besides a considerable detachment of regular troops, and a naval force with ships of war. Nearly all the States took some part in the celebration. More than twenty were represented by their chief executives, and quite that number were represented by regiments or companies of State troops. The State of New York participated by the presence of the Governor and Staff, the Thirteenth Regiment, accompanied by Dodsworth's band, a portion of the Sixty-fifth and Seventy-fourth regiments, and the Ninth separate company; as well, also, by a large number of prominent citizens. The New York troops presented an excellent appearance, and did great credit to the State by their admirable behavior.

The event was in every way commendable to the country; and the cordial commingling of citizens and soldiers from different sections of the Union on that memorable spot, and at the particular time chosen, should exert a salutary influence throughout our whole domain. The revival of the patriotic memories of the Revolutionary period inspired those present with renewed devotion to the Union, and will, let us hope, promote a new spirit of loyalty for the future.

ALONZO B. CORNELL."

The following is the report of the Commission:

To the Governor:

The commission appointed under the great seal of the State, in accordance with the resolutions of the Senate of the State of New York authorizing the Governor 'to extend the courtesies of the State to the delegation of the French government, the family of Lafayette, and the descendants of the Marquis de Rochambeau, the Count de Grasse, and of such other general officers of the French army and fleet, who served in the Yorktown campaign, as may visit the United States during the present summer, and to such other guests as may be delegated or invited to visit the United States for the purpose of taking part in the forthcoming celebration at Yorktown,' has the honor to submit the following report of its action in obedience thereto:

Organizing on the 3d of September, immediately after the receipt of your letter of appointment, your commission addressed letters of invitation to the several gentlemen invited by the general government, and to those who would accompany them, which were forwarded by the courtesy of the Honorable the Secretary of State of the United States. It afterward waited upon the Secretaries of State, of the Treasury, and of the Navy, in order to conform its arrangements of reception to the pleasure of the authorities of the general government. It is the first duty of your commission to report the cordiality with which these gentlemen accepted its cooperation in the agreeable and honorable duty of welcoming to our shores the distinguished guests of the Nation.

On the arrival of the French steam-frigate Magicienne, and the Aviso Dermont d'Urville, the escort of the expected delegation, under the command of Rear Admiral Halligon of the French West India Naval Station, your commission visited this officer on board of his ship, and was received with courteous ceremony.

A similar visit of welcome was paid to his Excellency M. Max Outrey, Minister of France to the United States, and chief of the delegation appointed to represent the French government and nation on his arrival from France, when a renewed tender of the courtesies and hospitalities of the State was formally made and accepted with frank cordiality.

The French trans-Atlantic steamer Canada arrived in the waters of New York bay on the early morning of Wednesday, the 5th of October, having on board the French delegation, the representatives of the family of Lafayette, and the descendants of officers who served at Yorktown. The vessel was saluted by the United States fleet assembled on the station, Rear Admiral Wyman commanding on his flag-ship the Tennessee. The French steamer was immediately boarded by the gentlemen of the United States department, designated by His Excellency the Secretary of State, to receive the honored guests in the name of the Nation, accompanied by your commission. After the ceremony of welcome by the United States authorities, your commission was presented to the delegation, and formally intrusted with their care and entertainment while within the limits of the State of New York. Transferred to a government tug, kindly tendered by the United States Treasury department, escorted by the United States vessels of war in the harbor, and honored by a passing salute from the United States fort at Governor's Island, the delegation was brought to the city and landed at the Battery, where carriages were in waiting to receive them, in which, escorted by the entire Seventh Regiment, New York National Guard, which had volunteered its services on the occasion, they were driven through Broadway, Fourteenth street and the Fifth avenue, to the Fifth Avenue Hotel, where elegant apartments had been provided for them by your commission. We recall with satisfaction and pride the general and hearty welcome extended by the citizens of the metropolis to these the guests of the Nation and of the State.

You will pardon a mention of the presentation of the delegation to yourself, and a reference to the magnificent military review of the first division of the New York State National Guard, Major-General Alexander Shaler commanding, held by you in person on Thursday, the 6th of October, in the presence of the honored delegation, who were invited guests. The published official report of General Boulanger, chief of the representatives of the French war department, bears witness to the appreciation the delegation entertains of your courtesy, and of the soldierly bearing and precision of movement of the troops reviewed. Here, again, your commission desire to mention the enthusiasm with which the visitors were welcomed by the population of the city, the entire length of the route from Madison square to Central park, as they were driven up and down the line.

In the evening, upon the invitation of the superintendent of the fire department, the guests witnessed the response to an alarm of fire, the execution of which, in all its details, excited their warmest admiration, and received special notice in the report already alluded to.

On Friday, the seventh October, the delegation visited West Point. By the courtesy of Admiral Wyman, and with the cordial concurrence of their commanders, the United States gunboats Vandalia, Captain Meade, and the historic Kearsarge, Captain White, were placed at the disposition of your commission for this visit. The guests were escorted from the hotel to the river side by the Gardes Lafayette. Admiral Wyman, Major General Hancock and a number of distinguished citizens accompanied the guests. The vessels sailed up the Hudson on one of the finest days of this beautiful season. At West Point the visitors were received with due ceremony by the post commander, witnessed a review of the Cadets of the United States Military Academy, and in the evening were entertained by your commission with a dinner and ball at Cozzens' hotel.

Saturday, the eighth October, by the courtesy of the president of the New York Central and Hudson River railroad, the delegation, escorted by your commission, was carried in a special train over the lines of the Hudson river and New York Central Railroad to Niagara. The thriving industrial towns on this extensive line were pointed out to the visitors. At way stations numbers of the inhabitants were gathered and gave welcome. On the journey an elegant collation of fifty covers was served in the cars while in motion at the rate of fifty miles an hour.

Sunday, the ninth October, was passed at Niagara in quiet contemplation of the majestic grandeur of the falls. Your commission must bear tribute to the liberality of the proprietors of the grounds, who, without exception, tendered free admittance; to the directors of the Suspension and other bridges for free passage, and for an evening of illumination of the falls by calcium light.

On Monday, the tenth, by the courtesy of the president of the New York and Erie Railroad Company, the French visitors, accompanied by your commission, were carried on a special train to Elmira, where they were met by a committee from the city of Baltimore, to whom was confided the charge of the guests. At Hornellsville an elegant breakfast was served in the dining room of the Erie railroad.

Returned to New York, your commission was in season to receive the representatives of the family of the Baron de Steuben, major general in the army of the United States in the war of the Revolution, who had been invited by the honorable the Secretary of State of the United States to participate in the celebration of the victory at Yorktown. These gentlemen, seven in number, accompanied by his Excellency the German imperial minister, Herr Van Scholozer, arrived in the Hamburg steamer Herder, on the morning of the twelfth October. They were received by representatives of the department of State of the United States, and placed in charge of your commission with the same ceremony extended to the former guests. Transferred to the United States steamer Kearsarge which, under the instructions of the admiral on the station, awaited their arrival, they were brought to the city under a passing salute from the fort, landed at the Battery and driven to the Fifth Avenue Hotel, where apartments had been arranged for them by your commission. In the evening, after a dinner given by your commission, they were escorted to musical demonstration of German citizens in Union square, over which the mayor presided, and thence to Jersey City, where they took cars for Washington.

The French gentlemen and the representatives of the Steuben family returned to New York on the fourth of November. On Saturday, the fifth, they were entertained by the Chamber of Commerce of the State of New York, at a magnificent banquet of over two hundred covers, tendered through the officers of your commission. A report of the proceedings on this interesting occasion has been published by the Chamber.

On Monday, the seventh of November, the French delegation and the representatives of the family of Baron de Steuben visited the New York Historical Society, in pursuance of an invitation tendered to them. They were received by the officers with formal courtesy, and a large number of the older members were gathered in their honor. The visitors expressed their satisfaction at witnessing the numerous historical relics of the Revolution, portraits of Lafayette painted from the life, numerous letters written by him during the American war and from his Prussian Austrian prisons, and the manuscripts of Baron de Steuben, especially full on the Yorktown campaign.

Your commission record with the greatest satisfaction this cordial co-operation of the Chamber of Commerce of the State of New York, and of the New York Historical Society both chartered institutions of the State, in the courtesies with which it was charged. Later, the extensive and commodious armory of the Seventh Regiment, N. G. S. N. Y., was visited.

On the evening of Monday, the seventh, a grand ball was given in honor of the guests of the Nation at the Metropolitan Casino by your commission, assisted by one hundred gentlemen of the City of New York of the first distinction.

On the evening of Tuesday, the eighth of November, in response to an invitation of M. Outrey, the chief of the French delegation, your commission met in the drawing room of the Fifth Avenue hotel and received a formal acknowledgment of its courtesies, at which the Secretary of the United States was present in person. The delegation disbanded the next day, a part taking the steamer for

France, others departing in various directions to visit the interior of the United States and Canada.

Friday, the twenty-ninth of December, your commission, informed by its treasurer that every obligation incurred by it had been discharged, held a final meeting, ordered that a report of their action be addressed to the Governor, with their joint and several thanks for the honor conferred upon them in their appointment, and was formally dissolved.

All of which is respectfully submitted.

JOHN A. KING,
Chairman.

JOHN AUSTIN STEVENS, Acting Secretary.
New York, 29th December, 1881.

January 20. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *January* 20, 1882.

"In 1873 the Legislature, by concurrent resolution, authorized the Lieutenant-Governor and Speaker of the Assembly to contract for the painting of a whole length portrait of Abraham Lincoln, to be placed in the Governor's room of the Capitol. Pursuant to such authority an excellent portrait of the martyr President was executed and paid for under a special appropriation. The picture came into the possession of the State several years ago, and was placed in the State Library, for safe keeping, to await the completion of the apartment in the New Capitol for which it was designed.

Soon after the formal occupation of the new executive chamber, directions were given for placing the portrait therein, but the available space was found insufficient, the figure being of heroic size, and requiring a more elevated position, than can be secured in the chamber, in order to afford a proper and imposing view. On that account, therefore, a suitable display of the painting cannot well be had in the Governor's room, and it seems desirable that some other disposition of the picture should be made than was originally designed. With this view, an examination of the several apartments of the Capitol, in company with the building superintendent, leads me to recommend that the portrait be placed in the Senate chamber, over the main entrance. Thus hung, it will present a fine appearance, and add to the attractiveness of the chamber. In consequence of the former Legislative action, designating the repository of the picture, it is desirable that the change of location be authorized by joint resolution of the two houses.[25]

ALONZO B. CORNELL."

February 14. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *February* 14, 1883.

"Herewith is respectfully presented a copy of joint resolutions adopted by the General Assembly of the Commonwealth of Virginia, and transmitted by the Governor of that State, relative to a bill pending in Congress to aid in the establishment and temporary support of common schools.

ALONZO B. CORNELL."

March 7. To the Senate:

**Veto of a bill entitled "An act to incorporate the Sing Sing branch of the American Society for the Prevention of Cruelty to Animals."**

"Provision has heretofore been made by law for the incorporation of a society, with general and ample powers, for the prevention of cruelty to animals in this State, which has been in active and successful operation for many years. Under the authority of its charter, this society has organized a considerable number of branch or auxiliary associations at different points in the State, including the one at Sing Sing. This bill proposes to create a special incorporation composed of the members of the parent society, residing at Sing Sing, with exclusive authority for self-perpetuation, and to invest it with certain very extraordinary powers.

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[25] The Senate on the 22d of March adopted a resolution that the portrait of Abraham Lincoln be placed in the Senate Chamber.

See special message of May 26, relative to a proposed change of portraits. In response to this message the Legislature adopted a concurrent resolution authorizing the Governor "to exchange the portrait of Lincoln, now in possession of the State, for another portrait of Lincoln, by the same artist, which shall be suitable in size for the Executive Chamber, provided such exchange be made without expense to the State, except for transportation."

The Constitution provides that 'corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the Legislature, the object of the corporation cannot be attained under general laws.'[m] If the bill under consideration does not literally come within this restrictive clause, it is certainly repugnant to the spirit of the Constitution, and in a case of urgent necessity only could any departure from it be possible, if at all, justified. Should it be deemed wise to authorize independent incorporations of the branches of the general society, or of isolated local societies for similar objects, it should be done by general law, and thus accord both in letter and spirit, with the organic law as quoted.

By the terms of the accompanying bill the proposed corporation is to consist of twelve persons named in the bill, and when vacancies happen by death, or resignation, they are to be filled by those remaining. Unlike other associations of various kinds, there is a singular omission in the bill of any mode for the admission of additional members which, though possibly not intended, would give the society an exclusive privilege of membership. It is respectfully submitted that associations vested with corporate powers should not be organized on such a narrow basis as the one proposed.

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[m] Const. 1846, art. 8, § 1.

The eighth section of the bill provides that all fines imposed and collected by any magistrate for the violations of the statutes for the prevention of cruelty to animals within the town of Ossining shall be paid over, after deducting the proper costs of the proceeding, to the treasurer of the society for its use. If any portion of fines is to be appropriated to such society, the law should declare definitely what it shall be, in order to secure the necessary and proper accountability of the officials whose duty it is to collect and account for the fines imposed.

One of the most objectionable features of the bill, however, is contained in the ninth section, which proposes to confer on any agent duly appointed by the executive committee of the society the powers of a town constable to make arrests for violations of the statutes referred to. This provision cannot be otherwise considered than in direct conflict with the second section of article ten of the Constitution, which defines the mode of appointment of all local officers. It certainly is not competent for the Legislature to endow a corporation with authority to appoint public officers of the character contemplated, however insignificant the functions they may be authorized to exercise.''

The bill was not passed over the veto.

March 24. To the Assembly: Transmitting the annual report of the trustees of the Sailors' Snug Harbor.

March 28. To the Assembly: Transmitting the annual report of the Commissioners of Quarantine.

April 25. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *April* 25, 1882.

"To promote the efficiency and usefulness of the national guard, when required for actual service, the Military Code of this State authorizes the annual assembling of a part of the guard in camps of instruction, provided that not more than 10,000 men in the aggregate may be so assembled in any one year. Hitherto the expense necessary to maintain the military establishment has rendered it impossible to provide for such camps of instruction out of the appropriations made for military purposes. During the past two years, however, the force has been reduced in number from 20,000 to about 12,000 men, in order that those remaining in the service be provided with camp experience and with exercises in the field without an increase of the ordinary expenses of this department.

While the law is ample for the organization of a camp of instruction, a careful examination discloses the fact that it does not authorize the purchase of the necessary site therefor; and in view of the expense required to properly equip a camp for use, it is not deemed prudent to make such an investment on leased ground. It is highly desirable that a portion of the troops should be encamped the present season, and selections have already been made of several regiments for such purpose. To enable the military department to discharge a duty which is deemed essential and even vital to the maintenance of a proper and effective national guard in this State, authority is desired to acquire and improve the necessary site. For this purpose the accompanying bill has been prepared by my direction, and is herewith respectfully transmitted to the Legislature with the hope that it will receive your early and favorable consideration.[26]

ALONZO B. CORNELL."

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[26] In 1885, by chapter 118, passed April 9, the adjutant general, inspector general and chief of ordnance were appointed commissioners to select a site for camps of instruction for the National Guard, and to purchase the same with the approval of the Governor. The act appropriated $30,000.

April 26. To the Senate:

**Veto of a bill entitled "An act to authorize the Gooderson Fire Engine Company No. 2, of Winfield, Queens County, to change its corporate name."**

"Existing laws abundantly provide for the change of corporate names by the courts, and except in some emergency, which would justify other action, this course should be observed in all cases. While there is no positive constitutional bar to this bill, it is clear that it was the intention of the framers of the Constitution to discourage legislation of this character.[n] It is difficult to see how a proposition to change the name of a fire engine company can be regarded as of sufficient importance to warrant the enactment of a special statute."

The bill was not passed over the veto.

April 26. To the Assembly:

**Veto of a bill entitled "An act to release the right, title and interest of the people of the State of New York in and to certain real estate in the city of Brooklyn and county of Kings, or the proceeds of the sale thereof, to John McLoughlin."**

"Under the operation of law there has come into the possession of the State the sum of $963.50, which this bill proposes to donate to one John McLoughlin, a British subject residing in Ireland. If propositions of this character are to be enacted into law there is no reason why the existing statutes relating to the descent of property in case of alienage should be continued in force.

Aside from the fact that under the present circumstances the person named has no legal claim against the State, there is a special objection to this bill in the fact that the application is made ostensibly in his behalf by other parties, with not a particle of evidence in the accompanying papers to show that the proposed beneficiary has any knowledge of this measure, or indeed, that he is aware of the foundation of the claim as set forth.

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[n] Const. 1846, art. 3, § 18, added 1874, changing names.

In every aspect of the case, it is apparent, from an examination of the papers submitted, that the bill is altogether objectionable on both legal and equitable grounds, and should not therefore be permitted to become a law."

The bill was not passed over the veto.

May 2. To the Senate:

**Veto of a bill entitled "An act to release the interest of the people of the State of New York in and to certain surplus moneys arising upon the sale of certain lands of which William Meyer died seized."**

"The sum of $7,137.34 has come into the right or possession of the State, as the avails of certain real estate sold under foreclosure of mortgage, which was the property of one William Meyer in his lifetime. It appears that Meyer was an illegitimate son of an unknown father, and had come to this country and was for many years wholly isolated from all association with his family relatives. This bill proposes to give this money to certain parties residing in California, who claim to be the descendants of a sister of Meyer's mother. They have never been residents of this State, and do not appear to have any reasonable claim upon the estate of the deceased. Upon what principle of right and justice it is proposed to take this amount of money from the State it is difficult to understand. It has come to the State under the operation of a law, and it is quite as much the property of the State as though it had been derived from any other legal source.

Had there been the ordinary ties of family association and relationship between Meyer and the parties in question, it is quite possible that the proposed appropriation might be justified. But that such a donation should be made to persons who to all intents and purposes were strangers to Meyer is quite another question. The fact that they can trace lineage and establish kinship with him is not a sufficient reason why the State should release its right to them."

The bill was not passed over the veto.

May 4. To the Assembly:

**Veto of a bill entitled "An act to amend chapter 863 of the Laws of 1873, entitled 'An act to amend the charter of the city of Brooklyn and the various amendments thereof.'"**

"It is proposed in the accompanying bill to remove the custody of the public school funds of the city of Brooklyn from the board of education to the city treasury. Whatever may be said as to the propriety of making such a change, this bill does not seem to be in proper shape to accomplish the object sought. It simply provides for an amendment of the city charter, without amending the laws relative to the board of education.

An examination of existing laws presents the fact that the board of education is an independent corporation, capable of suing and being sued, and vested with the title of all property acquired for school purposes in the city of Brooklyn. Numerous laws are also in force giving to the board the custody and control of the school moneys; and these would be antagonized by the enactment of this measure, from which it may be reasonably predicted, confusion and local complications would inevitably flow.

If the public interests require a change in the system of handling and accounting for the school funds of the city of Brooklyn, it should be secured by a careful revision of all the laws relating to the subject, in order that a complete and practical plan be secured, free from all possibility of conflict between the various departments of the city. It is respectfully submitted, therefore, that this bill ought not to become a law in its present form."

The bill was not passed over the veto.

May 4. To the Assembly:

**Veto of a bill entitled "An act to regulate the standard of illuminating oils and fluids for the better protection of life, health and property."**[27]

"This measure provides for the appointment of a general inspector and twenty-five deputy inspectors, who are required to test and examine all illuminating oils manufactured and offered for sale in this State, and prohibits the sale of any such article not duly inspected and branded. The bill is substantially identical with the one passed by the preceding Legislature, and which was returned without approval for reasons stated at length in the message accompanying it. All of the objections then noted are fully applicable to this bill; and further consideration of the subject has sufficed rather to confirm the opinions then expressed.

The Constitution provides that 'all offices for the weighing, gauging, measuring, culling or inspecting any merchandise, produce, manufacture or commodity whatever are hereby abolished, and no such office shall hereafter be created by law; but nothing in this section shall abrogate any office created for the purpose of protecting the public health.'[o] Unless it can be established that so large a proportion of illuminating oils offered for sale is dangerous, that it is unsafe to permit traffic in them without inspection, this constitutional prohibition seems to be an absolute bar to the system proposed. Such, however, can hardly be supposed when it is considered how seldom accidents happen from other causes than carelessness, in view of the almost universal use of these oils for domestic purposes.

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[27] This bill was not passed over the veto, but another bill on the same subject was passed, and became a law, chapter 292, on the 6th of June, 1882. The new bill required illuminating oils and fluids to be tested by or under the direction of the State Board of Health.

[o] Const. 1846, art. 5, § 8.

To bring the inspection of oils within the constitutional limit, it must be confined to such as warrant reasonable suspicion of danger. The State might very properly define by law the precise and safe standard, and prohibit dealing in such as do not conform thereto, with suitable pains and penalties. To make the law effective, also, an inspection of dangerous substances could, no doubt, be provided in a manner not repugnant to the organic law, nor expensive to the very great number of consumers; for it is very clear that the cost of any system of inspection would ultimately fall upon those who use illuminating oils, in an advance on the price fixed by the manufacturer and dealer. Furthermore, serious objection may be urged to such a complicated scheme as proposed, on the ground that it would unnecessarily burden and annoy a legitimate branch of trade and industry. The system devised is far-reaching, and would unquestionably prove offensive in its operation to both consumer and dealer. While it is important to guard against the danger of explosive oils, it seems clear that the end can be effectually accomplished without resort to means that would prove obnoxious in some particular to all classes, and care should therefore be taken to avoid the application of extreme and excessive measures."

May 5. To the Assembly:

**Veto of a bill entitled "An act to amend chapter 90 of the Laws of 1881, entitled 'An act to amend chapter 6 of the Laws of 1881, entitled An act to organize and establish a police force for the city of Binghamton.'"**

"The object of this bill is to increase the compensation of the police force of the city of Binghamton as prescribed by the act which it is proposed to amend. The same act provides that the members of the force shall have an unlimited tenure of office, except as they may be removed under certain specified forms of procedure by the police commissioners. It is, therefore, not competent for the Legislature to increase the emoluments of the men now in service.

The eighteenth section of article 3 of the Constitution provides that the Legislature shall not pass a private or local bill * * * creating, increasing or decreasing fees, percentage or allowances of public officers during the term for which said officers are elected or appointed.' Section 24 of the same article declares that 'The Legislature shall not, nor shall the common council of any city, nor any board of supervisors, grant any extra compensation to any public officer, servant, agent or contractor.' These two provisions were added to the Constitution by vote of the people in 1874, and were intended to prohibit and prevent improvident legislation. Although these restrictions might be avoided, if the accompanying bill were enacted, by allowing the men to resign and be reappointed, it would be such a manifest evasion of the intent of the Constitution that it would be entirely unjustifiable."

The bill was not passed over the veto.

May 9. To the Senate:

**Veto of a bill entitled "An act to legalize the action of the electors of the town of Sangerfield, Oneida County, New York, in voting to refund to Marvin J. West the money paid by him to the town as one of the sureties on the official bond of the supervisor."[28]**

"The Constitution expressly prohibits any county, city, town, or village from giving any money or property to or in aid of any individual.[p] It is, therefore, incompetent for the people of Sangerfield to refund money paid by the surety on an official bond, and the Legislature is powerless to legalize or confirm such an act."

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[28] See Mercer v. Floyd (1898), 24 Misc. 164, which held unconstitutional the act of 1897, chapter 111, directing the imposition of a tax on certain towns in Oneida county to raise money for the purpose of reimbursing the collectors of such towns for losses incurred by the failure of a bank in which they had deposited moneys received by them for taxes.

The bill was not passed over the veto.

May 9. To the Assembly:

**Veto of a bill entitled "An act regulating the trials of persons in capital cases, and giving the defense a right of the concluding address to the jury."**

"For many years there has been a gradual tendency in legislation with regard to criminal law to render conviction for grave offenses more difficult and uncertain. One impediment after another has been placed in the way by statutory enactment, until the conviction of a person indicted for crime has become almost a matter of surprise, when defended by able counsel. Enforcement of the law is thus constantly prejudiced and retarded, while too little is done to promote the ends of justice and bring evil doers to deserved punishment. No wonder, therefore, that a lack of confidence in the administration of the penal statutes is so generally felt. Such tendencies to lessen the chances of conviction cannot fail to engender disregard and contempt of law, and embolden the dangerous classes to more reckless and defiant conduct. On the other hand, it cannot well be doubted that the certainty of punishment would exert a potent and salutary influence for the prevention of crime. Failure to convict on account of some technical omission or insufficient provision of law of consequence affords constant encouragement to violators, who thereby take greater and more frequent chances in the commission of unlawful acts. While it is conceded that the plea of humanity should be duly heeded, yet it must be remembered that the interests of society demand that crime should be speedily and surely punished. Abundant safeguards already exist for the protection of the innocent; hence little danger of unjust conviction need be apprehended. Under our Constitution acquittal is a guarantee of immunity against further prosecution on the same charge.[q] But there is no remedy for the miscarriage of justice in the case of the guilty who chance to escape the judgment of the law. Moreover, that no unjust penalties may be borne if wrongfully convicted, the condemned always has recourse either to the courts of justice or executive clemency to correct an error or right a wrong.

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[p] Const. 1846, art. 8, § 11, am. 1874.

Although the enactment of the accompanying measure might not in itself produce any marked change in the administration of justice, still it is certainly a step in the wrong direction; and in this view it is objectionable. It would be tantamount to a notice to criminals that their chances of escaping conviction were to be increased; and the effect in this respect could not be otherwise than unfortunate and prejudicial to the safety of life and property."

The bill was not passed over the veto.

May 15. To the Senate:

**Veto of a bill entitled "An act to authorize the Board of Public Instruction of the city of Albany to expend an unexpended balance in their hands, or to their credit, to meet deficiencies in the annual appropriations for specific school purposes."**

" The school funds provided by local taxation in the city of Albany are levied by the common council upon estimates made by the board of public instruction. The common council has no authority to review the estimates, which are subject to the mayor's veto; but they may be carried over it by a three-fourths vote of the board of public instruction. Thus it appears that the limit on the amount of money to be raised for school purposes is dependent only on the approval of three-fourths of the educational board. The expenditures of the board are now confined to the amount raised for each designated purpose; and all unexpended balances on hand at the end of the year are to be contributed to the sinking fund for the extinguishment of the bonded indebtedness of the city.

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[q] Const. 1846, art. 1, § 6.

The accompanying bill proposes to authorize the board of public instruction to use any unexpended balance of a particular fund to meet any deficiency that may occur in any other fund during the year. The object of limiting expenditures within the amount raised for each specified purpose is to insure a careful consideration of all items of expense, and to hold the board to a proper accountability in the performance of its trust. The unavoidable result of the enactment of this bill would be to encourage improvident expenditure, and lessen the responsibility of the board. To provide for a deficiency is the surest way to create one; while, if there be no expedient, the board will be more likely to exercise its best effort to avoid any such contingency.

With this provision engrafted on the law governing the board of public instruction, it is easy to see how expenditures might be indefinitely extended. For instance, moneys raised for the building or repair of school houses may be directed to the payment of salaries, or any of the current or ordinary purposes under the jurisdiction of the board. The composition of the present board of instruction is of such character that no improper diversion of funds need be apprehended; but the membership of the board will undergo changes from year to year, and there is no guaranty that it will always remain as at present constituted. It is certainly more prudent to preserve the present safeguards against extravagant expenditures, even though inconvenience be sometimes experienced, than to bring within the sanction of law authority which might be easily abused, and which would offer constant temptation to trespass upon one or another fund, which should be held sacred to its original purpose.''

The bill was not passed over the veto.

May 15. To the Assembly:

**Veto of a bill entitled "An act in relation to the keeping open the office of the clerk of the county of Albany."**

'' The present Legislature has, by a general act, pursuant to the 23d section, article 3 of the Constitution, conferred upon boards of supervisors full authority to regulate the hours for keeping open public offices in their respective counties. The accompanying bill is therefore unconstitutional with the provisions of the 18th section of same article, if not positively repugnant thereto. This amendment of the Constitution was evidently designed to prohibit the enactment of local and special laws, in all cases where general laws may be provided. Inasmuch as the supervisors are now invested with authority to legislate upon this subject it does not seem appropriate that the Legislature should continue to enact local laws on the same subject.''

The bill was not passed over the veto.

May 15. To the Assembly:

**Veto of a bill entitled "An act in relation to closing certain offices in New York and Kings Counties on Saturdays."**

'' First — Chapter 118 of the Laws of 1882, confers on the board of supervisors of Kings County full authority to regulate the hours for opening and closing the county offices within their jurisdiction. It is questionable whether the Legislature now possesses the constitutional authority to pass a local bill on the subject.[r]

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[r] Const. 1846, art. 3, § 23, am. 1874.

Second — In regulating the office hours of county and municipal offices, the bill embraces two different objects. It is, therefore, in conflict with the Constitution, which restricts a local bill to a single object, which must be expressed in its title.[8]

Third — The title is also defective in making no reference to the Brooklyn city offices which it proposes to regulate. The offices are for the convenience of the public and should remain open during the ordinary business hours of the community in which they are situated. No reason is apparent why there should be discrimination in regard to the particular offices named in this bill. In general, and in detail, the bill is objectionable."

The bill was not passed over the veto.

May 15. To the Assembly:

**Veto of a bill entitled "An act in relation to selling furniture, bedding, sewing machines or household utensils upon the plan of requiring monthly or stated payments."**

"The object of this bill is to require dealers in certain articles of domestic use, when selling on credit involving payment by installments, to stipulate for the repayment of twenty-five per centum of all sums paid in case of the foreclosure of their liens on such articles for non-payment, and the recovery of all such property in default of payments is prohibited until twenty-five per centum of all moneys paid thereon shall have been returned or tendered to the purchaser. No provision is made as to the condition of the articles, to the injury or wear done and sustained, nor to the length of time they may have been used by the defaulting purchaser.

Regardless of detail, the measure appears to be objectionable on general grounds. It interferes with and hampers legitimate trade, thereby infringing on private rights. The selling of household goods on a systematic credit plan, of late years quite common, enables many families to surround themselves with necessaries, and luxuries also, not ordinarily within their reach. While such opportunity may, in a degree, lead to extravagance, yet the practice of saving and the accumulation of property from earnings that might otherwise be wasted in profligate habits, are quite likely to be encouraged. Formerly the installment system was confined to a few, and abuses were of frequent complaint; but since the extension of the business and the multiplied number of dealers, competition has cured the main evils.

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[8] Const. 1846, art. 3, § 16.

It is difficult to understand why traffic in the articles named in the accompanying bill should be placed upon a different basis from all other personal property. Purchasers without ready means need the very best credit they can obtain to enable them to make advantageous transactions. The enactment of this bill would manifestly reduce the value of security which is now afforded by liens on personal property. Its effect would be evidently injurious to the very class of people whom it is intended to protect. Dealers would save themselves harmless by advancing the price of goods and exacting such considerations as would make up for the adverse liability imposed upon them.

Furthermore the bill is violative of a principle which, if not expressly enunciated in the Constitution, is clearly in accord with the spirit of that instrument. It seeks to make a distinction between classes of dealers, discriminating against those who operate on the installment plan in certain articles enumerated, while others, who deal in a different kind of goods, merchandise or implements, on the same plan, are placed under no restrictions whatever. If the object of the bill be a good one, manifestly its provisions should extend to all. To single out particular ones, excepting all the rest, is conspicuously invidious and objectionable. It is supposed that the remedy sought to be applied is for some defect or abuse in the system. If this be so, obviously then the law should be directed to that end only, without deduction or immunity. The right to deal in any lawful article of merchandise is one of the plainest privileges of citizenship, and it may fairly be questioned how far the Legislature is authorized to interfere with legitimate traffic. The theory of our form of government is to afford the largest liberty in the exercise of all natural rights, and unreasonable interference with the ordinary current of trade is an invasion of the rights of the people and unwarranted by the Constitution.''[t]

The bill was not passed over the veto.

May 15. To the Assembly:

**Veto of a bill entitled "An act authorizing the Buffalo Cemetery Association to acquire additional lands, and to erect a building for office purposes."**

" The Governor objects to the bill on the ground of the close proximity to the city of Buffalo of the proposed lands and the rapid growth and development of that city which is likely, within a few years, to make this land desirable and needed for residences or business purposes. Like every other growing city, Buffalo is now suffering embarrassment from the occupation of lands for burial grounds, hence care should be taken in the location of cemeteries hereafter, to place them safely beyond the limits of prospective improvement. It is therefore believed to be unwise to reverse the policy adopted in the enactment of last year.''

The bill was not passed over the veto.

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[t] Const. 1846, art. 1, § 6; U. S. Const. 14th am. § 1.

May 15. To the Assembly:

**Veto of a bill entitled "An act authorizing the appointment of women in the boards of trustees or managers of state charitable, correctional, reformatory or eleemosynary institutions, where women and children are cared for."**

"Two ladies are now serving as members of the State Board of Charities under appointment of the Governor and Senate, and two others by like authority are trustees of the Women's Reformatory. Vain effort was made two years ago to find two ladies who would take appointment as trustees of another State institution. Those deemed qualified and selected were unwilling to allow the use of their names, and the proposition was, therefore, necessarily abandoned. It is feared from this experience that embarrassment might often be encountered in finding women suited to the duties and willing to accept such positions. In many charitable organizations women are doing noble work to reclaim the fallen. The recent law, making women eligible as school trustees, has produced admirable results, not only in securing the election of many of them as trustees of schools, but especially in elevating the qualifications of men proposed as candidates for school boards, and also in stimulating greater interest in the management of schools generally. The effect of these new experiences is to widen the influence and usefulness of women, and while fully sympathizing with the spirit which has promoted the passage of this bill, it is respectfully submitted that its arbitrary provisions would possibly produce reaction and thereby embarrass the very object which it seeks to advance. That clause of the bill excepting the Willard Asylum is also regarded as especially objectionable. That institution contains much the largest number of females of any in the State, and they are mostly of the poorer classes, whose friends are least able to give attention to their condition or necessities. Considering the subject in every detail it is believed that the public interests will be better conserved by leaving the selection of trustees to the discretion of the appointing power, than to run the risk of making mandatory requirements which could not always be satisfactorily carried out."

The bill was not passed over the veto.

May 16. To the Assembly:

**Veto of a bill entitled "An act to amend chapter 863 of the Laws of 1873, entitled 'An act to amend the charter of the city of Brooklyn and the various amendments thereto.'"**

"The Brooklyn park commissioners are, by the terms of this bill, to be continued in office for one year in addition to their term of service, which will expire on the 18th of this month; but the bill makes no provision for the appointment of its successors. The existing law authorizes the mayor to appoint commissioners upon the expiration of the term of the present incumbents, and as the accompanying bill does not expressly abrogate this authority nor contain a repealing clause of any kind, it seems likely to lead to confusion. If the mayor should act upon the authority now vested in him and appoint new commissioners, the city would probably be the victim of a legal contest to determine which set of appointees were entitled to hold.

The mayor of Brooklyn was elected on the direct issue of making that officer responsible for the government of the city; and he is invested with the most extensive powers of any municipal executive in the State. Nothing has occurred since his accession to the mayoralty to impair the confidence imposed in him by the friends of good government, and it would seem especially ungracious to deprive him of authority by legislation at this early period of his administration. Opportunity should be given, without embarrassment, to test the exercise of unrestricted executive authority in regard to municipal appointments, now under trial in the city of Brooklyn. It will be time enough to reverse this policy when an abuse of power or culpable neglect of duty shall become apparent."

The bill was not passed over the veto.

May 17. To the Assembly:

**Veto of a bill entitled "An act to incorporate the Buffalo Light Battery."**

"This bill proposes to incorporate a military organization to be designated the Buffalo Light Battery, to be wholly independent of the National Guard, and of the State military regulations, except that in case of emergency it may be mustered into actual service for a period of not less than thirty nor more than ninety days, when it shall be under the direction of the Commander-in-Chief. There is now a very efficient battery of the National Guard located at Buffalo, which is quite adequate for all ordinary purposes in that portion of the State, and therefore there is no public necessity for such an organization as the one proposed.

The Military Code makes all necessary provision for the organization of the militia, and is in full accord with the act of Congress relative to the State militia. It may be fairly questioned whether the accompanying bill is not in conflict with the Constitution of this State respecting local legislation,[u] and also with the Constitution of the United States, which prohibits the several States from keeping troops in time of peace without the consent of Congress.[v] Inasmuch, therefore, as the bill is not based upon any public necessity, and is not in accord with the general policy of the State relating to military affairs, it does not seem desirable that it should become a law."

The bill was not passed over the veto.

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[u] Const. 1846, art. 3, § 18, added 1874.

[v] U. S. Const. art. 1, § 10, clause 2.

May 23. To the Assembly:

**Veto of a bill entitled "An act relating to the employment of children by contract in houses of refuge, reformatories, correctional and other institutions."**

"The first section of this bill provides that 'it shall be unlawful for the trustees or managers of any house of refuge, reformatory, correctional or other institution to contract, hire or let by the day, week or month, or any longer period, the services or labor of any child or children under sixteen years of age, now or hereafter committed to, or inmates of such institutions. But this act shall not be construed so as to prevent the employment of such children upon work to be performed by the piece, under the sole direction of the trustees or managers or other proper officers of such institutions, nor shall it affect existing contracts.'

The inmates of the houses of refuge at New York and Rochester are now employed on contracts during a limited number of hours each day, and are provided with instruction in the common branches of education during the balance of the day. The enactment of this bill would therefore revolutionize the system of labor in both of these institutions at the expiration of the existing contracts. It will hardly be questioned that some regular system of industry is in the highest degree desirable, not only to make the institutions as little burdensome to the public treasury as possible, but especially to accustom the children to industrious habits and thereby qualify them for future self-support. This can only be accomplished by employing them directly for public account or under contracts by the piece or by the day. Employment for public account has been found by experience in the prisons and reformatories to be unprofitable and has therefore been discarded. Only last year this system was abolished at the Elmira Reformatory and the contract system substituted for it.

Piece contracts are also objectionable, in that imperfect work would necessitate the rejection of products to greater or less extent and thereby considerably reduce earnings. Contracting by the day is therefore the only system which affords either safe or satisfactory results. Careful inquiry as to the management of these two institutions has failed to reveal any substantial reason for the proposed change. Under the present system the contractors can only exercise supervision over the children employed through the medium of persons approved by the superintendent of the refuge. The discipline is wholly under the control of the managers and officers of the institutions; neither the contractors nor their representatives having any authority to punish, assign tasks or prolong the hours of labor. It does not appear that the supervision on behalf of the contractors is in any degree detrimental to the reasonable discipline of the inmates or otherwise prejudicial to their welfare and moral improvement. Very gratifying evidences of educational progress is furnished in regard to both institutions. Of the children at the New York House of Refuge about two-thirds are wholly illiterate when received, while at Rochester the proportion is only about one-third. All are subjected to thorough educational training during their stay, and their improvement in this respect is reported to be far greater than results from the same time spent in the public schools.

The inmates of the two institutions named now earn toward their own support between fifty and sixty thousand dollars annually. They are acquiring habits of industry and are learning trades which will be useful in enabling them to maintain themselves when discharged. There can be no doubt that the proposed change would materially reduce the earning capacity of the institutions, and there is no apparent evidence that the children would be benefited thereby. Considered therefore in the light of public economy, the measure is objectionable, while no satisfactory arguments are presented in its favor in other respects. The location of the New York House of Refuge in the immediate vicinity of active manufacturing cities and the large number of inmates, makes the labor especially available for contracting, and hence the argument that other States have abandoned the system in similar institutions, is not applicable with much force to the situation in this State.''

The bill was not passed over the veto.

May 23. To the Assembly:

**Veto of a bill entitled "An act to repeal chapter 443 of the Laws of 1868, entitled 'An act to limit and define the powers and privileges of the Eureka Basin Warehouse and Manufacturing Company of Long Island,' and the several amendments thereof."**

'' It is claimed on behalf of the Eureka Basin Company that it has proceeded in good faith under the laws which this bill proposes to repeal, and has thereunder invested a large sum and secured vested rights, which would be invaded or destroyed by the repeal; and further, that it has made important contracts and assumed obligations which would be interfered with and impaired by such repeal. How far these representations may be valid it is perhaps unnecessary at this time to inquire, in view of the fact that by chapter 637 of the Laws of 1881, the company was expressly granted one year additional time within which to commence its improvements and expend a certain amount thereon. The time thus given will not expire until July 13, 1882, and there can hardly be any justification in repealing the several acts named until that period of time shall have elapsed. If in the meantime the requisite conditions of law have been duly complied with, the good faith of the State will be involved in maintaining the rights accorded by general or special acts. On the other hand, should the company fail to meet these legal obligations, the courts can take cognizance of its failure and apply the proper remedy, and a future Legislature may with greater propriety consider the question of repealing the acts."

The bill was not passed over the veto.

May 23. To the Assembly:

**Veto of a bill entitled "An act to amend chapter 700 of the Laws of 1881, entitled 'An act to provide for the liability of towns and commissioners of highways in certain cases.'"**

"The act which it is proposed by this bill to amend provides that towns shall be liable for damages to persons and property caused by defective highways or bridges instead of the highway commissioners as formerly. The fourth section authorizes town auditors to audit and pay if deemed just, as a town charge, any judgment already recovered and not paid, as well also as judgments hereafter recovered. In consequence of a long standing controversy in one of the towns of Dutchess county over a claim for damages of this kind, a provision was inserted in the act that it should not apply to the county of Dutchess. The object of the accompanying bill is to repeal that section of the act which exempts Dutchess county from the operation of the law in question.

A memorial presented on behalf of the town of La-Grange shows that a judgment was recovered against the highway commissioners of that town for the loss of a horse in 1876, which, with costs and interest, amounts at the present time to about forty-four hundred dollars. The claim was allowed by the town auditors in 1878, and was placed in the town tax levy of that year by the board of supervisors, but the Supreme Court upon mandamus proceedings ordered its cancellation, and the judgment still remains unsatisfied. It is therefore the obvious purpose of the proposed repeal to remove the obstacle which now prevents the collection of this claim from the town of LaGrange. In view of the extraordinary amount of the claim for the loss of a single horse, and the further dispute as to whether the horse really died from injuries caused by a defective bridge or from other causes, it seems hardly just that the town should be now rendered liable for the judgment, and especially without being permitted to contest the claim on its merits in court."

The bill was not passed over the veto.

May 23. To the Assembly:

**Veto of a bill entitled "An act to provide for the compensation of services in the General Sessions of the Peace in and for the city and county of New York by stenographers."**

"The apparent object of this bill is to considerably increase the amount of services required to be rendered by the stenographers employed in the court of general sessions of the city of New York and to authorize a corresponding addition to their compensation. What public necessity there may be for increased service is not apparent, and it is surmised that the real object is to create additional duties in order to secure the increased compensation therefor. Whatever the true merits of the proposition may be, the title of the bill is regarded as fatally defective in failing to express the real subject as to which it relates. The statutes now in force make abundant provision for every object embraced in the title of this bill, while the bill itself embraces provisions not expressed in the title. It is therefore believed to be in conflict with section 16 of the third article of the Constitution."

The bill was not passed over the veto.

May 26. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *May* 26, 1882.

"A proposition has been made by Mr. Frank B. Carpenter, the artist, who painted the Lincoln portrait, to exchange for it one of normal size, which will be suitable for the executive chamber. Such an arrangement would be more satisfactory than to place the picture in the Senate chamber. There is, however, no authority at present existing for such an exchange, and it is respectfully suggested that the Legislature by concurrent resolution confer upon some officer of the State the requisite authority to make the proposed exchange. [See note 25.]

ALONZO B. CORNELL."

May 29. To the Senate:

**Veto of a bill entitled "An act to amend chapter 77 of the Laws of 1873, entitled 'An act to equalize the representation in the Board of Supervisors of Fulton County.'"**

"Section 18 of the third article of the Constitution provides that 'the Legislature shall not pass a private or local bill * * * providing for election of members of boards of supervisors.' Although the accompanying bill is an amendment of an existing law, it is in positive conflict with the foregoing constitutional restriction, and would, therefore, be inoperative if enacted."

The bill was not passed over the veto.

May 29. To the Senate:

**Veto of a bill entitled "An act in relation to the appointment and removal of stenographers of the Supreme Court in the County of Kings, in the Second Judicial District."**

"Existing laws seem to make all reasonable provision for stenographic service in the Supreme Court of Kings

County, and the propriety of making the large increase of expenditure authorized by the accompanying bill is not apparent. The proposition to provide a stenographer for a judge of the Court of Appeals at the expense of Kings county is considered objectionable, in that it requires a single county to pay an expense which, if it be a proper public charge, the State should defray. Judges of the Court of Appeals are State officers, and whatever cost of assistance they need must be provided out of the State treasury."

The bill was not passed over the veto.

May 29. To the Assembly:

**Veto of a bill entitled "An act to amend chapter 53 of the Laws of 1879, entitled 'An act to revise the charter of the city of Auburn.'"**

"The common council of the city of Auburn, under the revised charter enacted in 1879, is authorized to raise annually, by taxation, $12,000 for the compensation of police. The accompanying bill authorizes the raising of $17,000 for that purpose. It is difficult to understand what justification there can be for increasing the limit of the police fund in any city forty per cent and more within the short space of three years. The bill also increases the amount that may be raised for lighting streets and public buildings from $17,000 to $20,000. Auburn now pays more for this purpose than any other city of like size in the State, and more than double the amount paid by several of equal population. There is no apparent reason why this service should be so much more expensive in Auburn, hence the proposed change is regarded as unnecessary and unwise."

The bill was not passed over the veto.

May 30. To the Senate:

**Veto of a bill entitled "An act to amend chapter 443 of the Laws of 1881, entitled 'An act to provide for the settlement and collection of arrearages of unpaid taxes and assessments in the city of Brooklyn, and to insure a more efficient collection of taxes in future.'"[29]**

"Under the pretense of amending the Arrearage Act of 1881, this bill seeks to revive the commission created by this act, whose functions have already ceased by limitation of time, as fixed therein, and to confer upon it authority unknown to that act, and which is believed to be unconstitutional. The bill proposes to vest the commission 'with full power, in all cases where any tax, assessment or water rate levied or imposed in any land in said city prior to January 1, 1879, remains unpaid, and in arrears, and in the judgment of the board hereby constituted, is wholly or partly uncollectible, either by reason of the amount of such arrearages or of any want of jurisdiction, irregularity or defect in any of the proceedings for levying, imposing or confirming any tax, assessment or water rate on such land; to reduce the arrears of all taxes, assessments and water rates on such land, levied or imposed before the passage of this act, so as to realize as much as with authority of law would be actually and fairly collectible of such arrears from the property, and to fix, adjust, compromise and determine the same; the said board of commissioners to deal with said arrearages as matters of fact, according to their judgment of what shall be fair and just.' * * * 'Said board shall certify to the registrar of arrears and to the Comptroller the amount which it shall determine should be collected in each case, and such amount is hereby levied as a tax and the same shall constitute a valid and binding tax on said lands irrespective of any question of irregularity or law, jurisdictional or otherwise, attending said taxes or assessment as originally levied or attempted to be levied.'

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[29] The Brooklyn tax bill was not passed over the veto, but a bill on the same subject, and with the same title was passed, and became a law chapter 348, on the 15th of June, 1882.

* * *

This is an attempt to delegate to a board of individuals named by the Legislature authority to determine the amount of a tax, and to levy the same upon certain property where former levies have failed for want of jurisdiction, or on account of irregularity or defect in any of the proceedings for levying, imposing or confirming them. In other words, to levy taxes in lieu of those heretofore levied, and which, for the reasons named, proved to be void. If such taxes are to be levied and the power to fix and determine the amount thereof is to be delegated, it must be to the legally constituted authorities of the city of Brooklyn. The Legislature cannot delegate such a duty to individuals, or to a special commission unknown to the municipal organization.

Section twenty of the third article of the Constitution provides that 'every bill which imposes, continues or revives a tax shall distinctly state the tax and the object to which it is to be applied, and it shall not be sufficient to refer to any other law to fix such tax or object.' The accompanying bill is, therefore, defective in failing to state the object for which the tax is imposed, and still further because it fails to indicate in its title that it authorizes the levying of a tax."

The bill was not passed over the veto.

May 31. To the Assembly:

**Veto of a bill entitled "An act supplemental and relative to chapter 521 of the Laws of 1880, entitled 'An act to reorganize the local government of the city of New York, and to reduce the burden of taxes to be levied in said city.'"**

"The department of public charities in the city of New York, is required by the terms of this bill to fix the compensation of keepers of the city prisons and penitentiary at the rate of $80 per month, and 'the said department must pay to the keepers of the said city prisons and penitentiary the sum of $80 per month during the year 1882, and each and every succeeding year.' This provision is clearly in conflict with the twenty-fourth section of the third article of the Constitution, which provides that 'the Legislature shall not, nor shall the common council of any city, nor any board of supervisors, grant any extra compensation to any public officer, servant, agent or contractor.'"

The bill was not passed over the veto.

June 1. To the Assembly:

**Veto of a bill entitled "An act to extend the time for Marilla M. Sharpe to file her claim for damages with the canal appraisers."**

"The fourteenth section of the seventh article of the Constitution provides that neither the Legislature, Canal Board, Canal Appraisers nor any person or persons acting in behalf of the State, shall audit, allow or pay any claim which as between citizens of the State would be barred by lapse of time. The statutes provide that claims for personal injury or on account of death caused by negligence shall be made within two years after the happening of such injury or death. It is therefore not competent for the Legislature to authorize the Canal Appraisers to hear the claim described in the accompanying bill."

The bill was not passed over the veto.

June 2. The Legislature adjourned without day.

## THIRTY-DAY BILLS.

June 5.

**Veto of the following items in Assembly bill, chapter 280, making appropriations for canals:**

"That portion of the first paragraph of section one which reads as follows:

'The salaries and traveling expenses of the Canal Appraisers, the clerk hire and incidental expenses of their office.'

And also the fifth paragraph of section one, which reads as follows:

'For the salaries and traveling expenses of the Canal Appraisers and for the clerk hire and incidental expenses of their office, twenty-five thousand dollars, or so much thereof as may be necessary.'

These items are objected to and not approved for the reason that an appropriation for the maintenance of the Canal Appraisers' department for the ensuing fiscal year has already been made in the general appropriation bill, chapter 270 of the Laws of 1882."

June 16.

**Veto of the following items in Assembly bill, chapter 356, appropriating money for awards made by the canal appraisers:**

"'For John F. and Grant Mesereau, by Samuel Probasco, their guardian, one hundred and twenty-five dollars. Charles Rodman, forty dollars.'

The items are objected to and not approved for the reason that there is not a sufficient amount appropriated to pay these awards in addition to the other items named. It appears that these items were inserted in the bill after the amount of the appropriation had been determined upon. While the items are just and proper, and should be paid, the fact that the appropriation is inadequate, makes it seem better to exclude them from this bill in order that they may be included in the next appropriation bill for such purposes."

June 19.

**Memorandum filed with Assembly bill, chapter 359, amending the charter of the village of Waterloo."[30]**

"This is an elaborate and carefully prepared revision of the charter of the village of Waterloo, and appears, in the main, to be a desirable measure; but it contains one provision clearly unconstitutional, with reference to the taking of private property for public uses. It provides in this respect that the village assessors shall appraise the value of property so to be taken. The Constitution declares that 'when private property shall be taken for any public use, the compensation to be made therefor, when such compensation is not made by the State, shall be ascertained by a jury or by not less than three commissioners appointed by a court of record, as shall be prescribed by law.'[w] The village assessors cannot therefore be vested with this authority, and this portion of the bill would be wholly void if it becomes a law.

Ordinarily this objection would be fatal to the bill; but it being manifestly desirable for the general interests of the village, that the other features of the bill should take effect, its approval in the present form seems justified, in the view, also, that amendment in respect to the above noted defect may hereafter be supplied."

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[30] The Waterloo charter was amended in 1883, chapter 333, by providing for a jury to assess damages in cases of street improvements.

L. 1882, chap. 359, was sustained in Reed v. Schmit (1886), 39 Hun, 223, as to local laws (Const. art. 3, § 16) and as to the power of the Legislature to amend the charter of a village incorporated prior to the adoption of art. 3, § 18.

[w] Const. 1846, art. 1, § 7.

June 22.

**Veto of Assembly bill, entitled "An act to provide for the purchase of a site for and the erection of a state armory at the city of Troy, and making an appropriation therefor."[31]**

" While nominally appropriating seventy-five thousand dollars for the purchase of a site and the erection of an armory in the city of Troy for the use of the National Guard in that city, the bill, unfortunately, makes no provision for the payment of money, and no practical effect could, therefore, follow its approval. The commissioners designated to conduct the work would have no warrant to take definite action because of their inability to realize or command the funds intended to be placed at their disposal. This oversight in the wording of the bill renders it of no value beyond a declaration of the intent of the Legislature. Should a future Legislature fail to remedy the defect it would be wholly inoperative and useless. It seems better, consequently, to allow the entire subject to go over, without further action, in order that it may be passed upon hereafter, without embarrassment or prejudice."

June 22.

**Veto of Assembly bill, entitled "An act to amend an act entitled 'An act to amend an act to incorporate the City of Troy, passed April 12th, 1816, and the several acts amendatory thereof, and also to amend other acts relating to the City of Troy,' passed May 3d, 1870, and also to amend other amendatory and supplementary acts relating to the City of Troy, or some of the departments of said city, passed since May 3d, 1870."**

" Nearly every section of this bill provides for increasing the salaries of city officers. The sum proposed to be added to the present burden of the taxpayers of Troy can hardly be estimated at less than $30,000 per annum. Not content with advancing salaries now or hereafter, the fifteenth section provides for increasing certain salaries, to take effect May 28, 1881. This is clearly in fatal conflict with two separate sections of the Constitution.[1] Besides augmenting city expenditures, the bill removes several prudent if not indispensable safeguards with respect to official accountability, and if sanctioned, would probably lead to unfortunate results. With such objectionable features the bill does not seem to contain redeeming qualities sufficient to offset or overcome them. Seldom, indeed, does a bill come before me with less of merit to commend it to approval.''

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[31] Another Troy armory bill was passed in 1883, and became a law, chapter 100, on the 15th of March.

June 22.

**Veto of Assembly bill entitled "An act relating to certain corporations, joint stock companies and associations in the city and county of New York, and the assessment and taxation of property of the same for the purposes of the local government of said city."**

" Objections to the enactment of this measure have been made by the mayor, comptroller and corporation counsel of the city of New York, which appear to be well founded and sustained. The courts are now dealing with the principal questions involved, and it is far better that a solution should be reached by judicial determination than by the arbitrary legislation proposed in the bill hereto annexed."

June 27.

**Veto of the following items in the supply bill, Chapter 362:**

" 'For Benjamin F. Brady, for preparing and engrossing memorials of the proceedings of the Senate and Assembly relative to the death of Hon. Webster Wagner, late Senator from the Eighteenth Senatorial district of this

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[1] Const. 1846, art. 3, §§ 18, 24, am. 1874.

State, the sum of eight hundred dollars, payable on the certificate of the committees of the Legislature having charge of the preparation of the memorials, and on the audit of the Comptroller.'

This item is objected to and not approved, for the reason that the sum named is regarded as excessive. While the object is considered a proper one, nothing appears to justify the payment of an unreasonable demand for the services performed.

Of the item 'For the State Entomologist,' that portion which reads as follows: 'for the expenses of his office the sum of five hundred dollars, to be paid on vouchers to be approved by the Comptroller; and'

This item is objected to and not approved, for the reason that the law under which the State Entomologist was appointed does not contemplate an expenditure of this character, and nothing in the nature of the duties of the office warrant such an appropriation.

'For the erection of an armory for the use of the Seventeenth separate company of infantry, at Flushing, Queens county, the sum of nine thousand dollars, to be expended under the direction of the Adjutant General, the Inspector General and the Chief of Ordnance, but no part thereof shall be expended until the title to the land upon which such armory is to be constructed shall have been vested in the State free from all incumbrances.'

This item is objected to and not approved, for the reason that the State has no need of an armory at Flushing.

'For W. L. M. Phelps, for services in the preparation of the annual report on railroads for the year eighteen hundred and eighty-one, three hundred and twenty-five dollars, payable on the certificate of the State Engineer and Surveyor, to be refunded to the treasury by the several railroad corporations of this State in proportion to their respective gross receipts, pursuant to chapter five hundred and twenty-six of the laws of 1855.'

This item is objected to and not approved, for the reason that section 19 of article 3 of the Constitution provides that the Legislature shall neither audit nor allow any private claim or account against the State.

'To Charles H. Peck, State Botanist, for expenses incurred by him in the discharge of his duties as Botanist in charge of the herbarium of the State Museum of Natural History, between January first, eighteen hundred and eighty, and January first, eighteen hundred and eighty-two, one hundred and fifty-four dollars and twenty-eight cents.'

This item is objected to and not approved, for the reason that the Legislature is expressly prohibited from auditing or allowing any private claim or account against the State.

'For the comptroller, for payment of the expenses of the committees of the Senate and Assembly of 1882, appointed under resolutions of the two Houses to receive delegates from the Massachusetts Legislature, the sum of one thousand and sixty dollars and sixty-nine cents, or so much thereof as may be necessary.'

This item is objected to and not approved, for the reason that the sum named is not only an extravagant, but an unwarranted provision for the object indicated.

'For the Comptroller, for expenses of legislative committees and compensation of witnesses in addition to all sums heretofore or herein appropriated therefor, the sum of five thousand dollars.'

This item is objected to and not approved, for the reason that other appropriations made in this bill are considered ample to provide for all proper expenditures of the character indicated for the current year.

'For the services and expenses of the agent appointed to investigate the condition of asylums and other institutions of the State, and to ascertain their needs for appropriations, the sum of one thousand dollars.'

This item is objected to and not approved, for the reason that it is without proper authority, and of no apparent benefit to the State. No such agent has been designated by the Comptroller and there is no law authorizing such an appointment by any other officer of the State.

'For deficiency in appropriations for the compensation of stenographers appointed pursuant to chapter 765 of the Laws of 1868, five hundred dollars, to be paid only from moneys which shall have been or shall be paid into the treasury for taxes levied for the purposes of said act, and in pursuance thereof.'

This item is objected to and not approved, for the reason that so much of chapter 765 of the Laws of 1868 as authorized the employment of stenographers, was repealed by chapter 417 of the Laws of 1877, and the necessity of providing for any deficiency under the operations of that law, at this late day, is not apparent.

'For the justices of the Supreme Court in the second judicial district, not residing in the county of Kings, for additional compensation for services as such justices, from October 1, 1872, to October 1, 1877, twelve thousand five hundred dollars, and for such services from October 1, 1876, to October 1, 1877, two thousand five hundred dollars, pursuant to chapter 765 of the Laws of 1868, to be paid only from moneys which shall have been or shall be paid into the treasury from taxes levied for the purposes of said act, and in pursuance thereof.'

This item is objected to and not approved, for the reason that it is apparently intended to renew by appropriation certain claims of justices of the Supreme Court in the second judicial district for increased compensation which were refused by the Comptroller, during the period mentioned. Whatever merit the claims may possess, this is not the proper way to establish them.

'For the stenographer, acting also as clerk of the Senate special railroad investigating committee, five hundred dollars, or so much thereof as may be necessary, payable on the certificate of the chairman of such committee.'

This item is objected to and not approved, for the reason that existing laws provide for the due compensation of legislative employees, and ample appropriations have heretofore been made for such purposes.

'For the county of Cayuga, as an equitable reimbursement for certain expenses incurred and paid for the two trials in 1873 and 1874, and the appeals thereon, of Michael Donohue, a convict, indicted for the murder of a convict in Auburn prison, including all disbursements made necessary during the incarceration of said Donohue prior to, pending and subsequent to the trials; for like expenses incurred and paid for the trials in 1874, of John Coughlin, Patrick Egan, Thomas E. Hardy and Patrick Clifford, convicts, indicted for assaults with deadly weapons upon a keeper in said prison, including like disbursements; for like expenses incurred and paid for the trial in 1875, of Edwin Thomas, a convict, indicted for the murder of a convict in said prison, including like disbursements; for like expenses incurred and paid for the trial, in 1877, of Harvey Thorpe, a convict, indicted for the murder of a convict in said prison, including like disbursements; and for like expenses incurred and paid for the trial in 1877, of William Barr, a convict, indicted for the murder of a keeper in said prison, including like disbursements, the sum of eight thousand and nine dollars.'[32]

This item is objected to and not approved, for the reason that the claims thus provided for are mostly barred by lapse of time under section 14, article 7 of the Constitution. The trials of Donohue, Coughlin, Egan, Hardy and Clifford occurred in 1873 and 1874, and that of Thomas in

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[32] By an act passed in 1885, chapter 428, Cayuga county was authorized to present to the Board of Claims its claim for expenses on account of trials for offenses committed in Auburn prison. [See 1877, note 21, *ante*, p. 87.]

1875. Only those of Thorpe and Barr have occurred within the time in which claims can be considered under the Constitution. If any allowance could properly be made on account of these expenditures, the claims should first be passed upon by the Board of Audit. The Legislature cannot evade the Constitutional prohibition with reference to the settlement of claims, by declaring the appropriation to be an 'equitable reimbursement,' as proposed in this item.

'For the county of Clinton, to refund to it the expenses incurred and paid for the trial, in 1881, of Henry King, a convict, indicted for the murder of Michael Hamilton, in Dannemora prison, including all disbursements made necessary during the incarceration of said King prior to, pending and subsequent to the trial, the sum of eight hundred and forty-seven dollars and twenty-four cents.'[33]

This item is objected to and not approved, for the reason that the Legislature is expressly prohibited by the Constitution from auditing or allowing claims or accounts against the State.[y] The claim should be presented to the Board of Audit, for its adjudication, when, if allowed, it will be competent for the Legislature to make an appropriation for its payment.

'For the services of a messenger for the committee on finance of the Senate for the session of 1882, the sum of one hundred and fifty dollars payable on the certificate of the chairman of the committee.'

This item is objected to and not approved, for the reason that no such employee is provided for by the statute prescribing the officers and employees that may be elected, appointed or employed by the Senate and Assembly; and that act expressly declares that no additional employees of this character shall be elected or appointed.

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[33] An act was passed in 1887, chapter 440, authorizing the Board of Claims to hear and determine the claim on behalf of Clinton county for expenses incurred in the trial of Henry King for a crime committed in Clinton prison.

[y] Const. 1846, art. 3, § 19, added 1874.

'For the clerk of the committee appointed by the Senate of 1881, to investigate the affairs of the health officer's department of the port of New York, the sum of five hundred dollars, payable on the certificate of the chairman of such committee.'

This item is objected to and not approved, for the same reason as stated for the disapproval of the last mentioned item.

'For the services of a special clerk of the committee on insurance of the Senate, in the investigation of insolvent insurance companies, five hundred dollars, and for the services of a special clerk of the committee on insurance of the Assembly, in the investigation of insolvent insurance companies, three hundred dollars, to be paid on the certificates of the respective chairmen of such committees.'

Both of the items in this paragraph are objected to and not approved, for the same reasons stated for the disapproval of the last two mentioned items.

'For the commissioners of the land office, to pay the expense of locating, monumenting and mapping the line between the counties of Lewis and Herkimer, three thousand dollars.'

This item is objected to and not approved, for the reason that very liberal appropriations have already been made for the current year for work of this character, and unless the special object designated in this item can be carried on in connection with one or the other of the surveys now in progress, it may well be delayed until after the expenditures incident to those enterprises shall have ceased.

'Of the appropriations for the New York State Reformatory at Elmira, the several items which read as follows: 'For building a boiler house and removing boilers from central building, eighteen thousand dollars; for fitting up hospital in northwest pavilion, five thousand dollars; for erecting pump house and purchase of pumps and piping for water supply for domestic purposes, four thousand dollars and for construction of reservoirs for water supply as protection against fire, and purchase of steam fire engine, six thousand dollars.'

These several items are objected to and not approved, for the reason that in view of the enormous expenditures which have heretofore been made for the construction and maintenance of this institution, the State treasury should be exempted from further drafts on account of improvements therein, until other public works now in progress shall have been completed and the burdens of the taxpayers on such account shall have been materially diminished.

'For the asylum for insane criminals at Auburn, for renewing and repairing heating apparatus, providing for fire protection, and enlarging and furnishing chapel, eight thousand dollars.'

This item is objected to and not approved, for the reason that adequate appropriations have already been made for the ordinary repairs of this asylum, and the necessity of the expenditure of this large sum for extraordinary purposes is not regarded as sufficient to warrant such appropriation at this time.

'For securing additional religious instruction to convicts in the several State prisons, fifteen hundred dollars, to be expended under the direction of the Superintendent of State Prisons.'

This item is objected to and not approved, for the reason that due provision has already been made in the regular appropriation for the maintenance of the State prisons, for the purpose indicated.

'For the Superintendent of State Prisons, for the payment of the final estimate for building a new dock at Sing Sing prison, pursuant to chapter 252 of the Laws of 1878, and chapter 272 of the Laws of eighteen hundred and seventy-nine, the sum of five thousand seven hundred and ninety-two dollars and sixty-two cents, payable on the certificate of the State Engineer and Surveyor.'

This item is objected to and not approved, for the reason that the claim should be passed upon by the Board of Audit in order to determine the amount of the liability of the State. It is not competent for the Legislature to fix the amount to be allowed on a claim of this character.[a]

That item in the paragraph making appropriations for the Binghamton Asylum for the Chronic Insane, which reads as follows: 'The sum of twenty thousand dollars.'

This item is objected to and not approved, for the reason that it is considered an unreasonable amount to be appropriated to this institution, for the current year, in addition to the sum appropriated by the remaining portion of this paragraph.

Items in the paragraph making appropriation for the Hudson River State Hospital, which read as follows: 'For construction of roadway under the Hudson River railroad, two thousand dollars.' * * * 'For coal sheds, one thousand dollars.' * * * 'For refunding to maintenance account for amounts drawn from it and expended in renewals, repairs and betterments, twelve thousand dollars.' * * * 'Hereafter no money shall be drawn and expended from the maintenance fund of any asylum except for the support of patients.'

These several items are objected to and not approved, for the reason that the balance of the appropriation made for this institution is regarded as extremely liberal for the present year. There is no good reason why ordinary repairs and all incidental expenses of asylums should not be paid out of the maintenance fund.

Items in the paragraph making appropriations for the Buffalo Asylum for the Insane, which read as follows: 'For stock on farm, cows, pair working horses, harness, wagon and sleigh, and fitting up milk room, one thousand five hundred dollars; for painting and finishing walls and floors of administration building, seven hundred and fifty dollars; for cistern for storage of water to guard against failure in supply, five hundred dollars; for fitting up office and storeroom with shelving and other fixtures, two hundred and fifty dollars; for erecting fence about exercise grounds and putting grounds in condition for use of patients, one thousand dollars; for storm windows on administration building and dining rooms of wards, three hundred dollars; for drain about the foundation of walls, five hundred dollars; for completing and furnishing of chapel, one thousand dollars.'

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[a] Const. 1846, art. 3, § 19, added 1874.

These several items are objected to and not approved, for the reason that they are mostly for purposes which are proper to be provided for out of the maintenance fund, and should not be made the object of special appropriation.

Items in the paragraph making appropriations for the Homoeopathic Asylum at Middletown, which read as follows: 'For tile floor throughout basement of main building, fifteen hundred dollars;' * * * 'For renovating heating apparatus in main building, six thousand dollars; for repair of water-closets, one thousand dollars; for new pipe and for water supply, four thousand dollars; for addition to ice-house, five hundred dollars; for medical library and surgical appliances, five hundred dollars;' * * * 'and for fitting up gymnasium and workshop for patients, one thousand dollars.'

These several items are objected to and not approved, for the reason that the purposes indicated are mostly of a character to be classed as ordinary repairs and incidental expenses, which should be paid out of the maintenance fund, and should not be provided for by special appropriation.

'For the New York State Lunatic Asylum, for renewal and repairs of wards ten and twelve of the women's department, and wards five and nine of the men's department, twelve thousand nine hundred and seventy-six dollars and thirty-eight cents; and for three thousand three hundred and fifty feet of hose, sixty-seven brass couplings, twenty-four plug pipes, six steel pick axes and six holders for same, six fire hooks, twenty-four hose spanners, and thirty-six rubber buckets, two thousand and fifty-two dollars, to be expended under the direction of the trustees of the asylum, subject to the audit of the Comptroller.'

Both of the items embraced in the foregoing paragraph are objected to and not approved, for the reason that the purposes indicated are in the nature of repairs and incidental expenses proper to be provided for out of the maintenance fund, and should not be the object of special appropriation.

'For boring an experimental well to test the question of the existence of salt in place on or near the Onondaga Salt Springs reservation, to be expended under the direction of the Superintendent of the Onondaga Salt Springs, the sum of ten thousand dollars. This appropriation shall be paid from the general fund out of any money arising from the duties on salt not otherwise appropriated.'

This item is objected to, and not approved, for the reason that it is not regarded as a judicious expenditure to be authorized at the present time.

'For the payment of an award made by the State Board of Audit in favor of Charles A. Danolds, April 15, 1879, for claim arising under contract for work on the Elmira Reformatory, which award has been affirmed by the Supreme Court and the Court of Appeals on appeals thereto by the Attorney General on the part of the State, the sum of sixty-five thousand dollars, and for interest thereon the sum of twelve thousand three hundred and fifty dollars.'[34]

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[34] The Danolds award with interest was paid from an appropriation made by L. 1883, chapter 177. [See 1879, note 22, *ante*, p. 375.]

These several items are objected to and not approved, for the reason that the Attorney General is of opinion that upon a new trial of this case the claim might be reduced in whole or in part by testimony which was not available upon the former trial. The Attorney General recommended the enactment of authority by which he could move for a new trial in this case, and also in the Worthington case; but owing to the late date this suggestion was made, legislative action failed. In view of these facts, therefore, it seems proper that the appropriation should be postponed until another Legislature be enabled to deal further with the case as the interests of the State may seem to warrant.

'For the payment of an award made by the State Board of Audit in favor of George Worthington, April 15th, 1879, for balance due on contract for iron work on Elmira Reformatory, which award has been affirmed by the Supreme Court on appeal thereto by the Attorney General on the part of the State, and from which decision of affirmance the Attorney General declines to appeal to the Court of Appeals, the sum of twenty-five thousand dollars, and for interest thereon the sum of four thousand six hundred and eighty-seven dollars and fifty cents.'[35]

These several items are objected to and not approved, for the same reason as stated for the disapproval of the last preceding item making appropriation for the Danolds claim.

'For the payment of the award of the State Board of Audit to Timothy J. Sullivan, for the balance due him on contract for materials furnished and labor performed for the New Capitol, as awarded March 12th, 1880, the sum of eight thousand three hundred and forty-six dollars and eighteen cents, and for interest thereon the sum of one thousand and one dollar and fifty-four cents.'

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[35] The Worthington claim, including interest, was provided for by L. 1883, chapter 395.

This item is objected to and not approved, for the reason that the party named has no valid claim against the State, and that the action of the Board of Audit was taken without having before it the fact that the claim had previously been audited and settled by the New Capitol Commissioners; and also that the claimant accepted such settlement and receipted for the amount allowed, thereby releasing the State from liability under his contract.[36]

This claimant contracted in 1874 to furnish for the New Capitol building rolled iron beams and girders of certain specified dimensions. He found that ordinary commercial iron would not conform to the exact size which he had contracted to deliver, and he applied to the architect to permit him to make the necessary variation to avoid literal compliance with his obligation. The architect refused to accept the iron of less thickness than the contract called for, and hence the contractor found himself obliged to choose between furnishing the iron of the specified dimensions, or such as he could purchase in the open market, slightly thicker than was required. And accepting the latter course as more favorable to himself he decided to act accordingly. In November, 1875, after the contract was completed, the account was audited by the New Capitol authorities at $59,961.82 less $53,000 previously paid in the progress of the work. For the balance, $6,961.82, the New Capitol Commissioners issued their certificate, and the Comptroller's warrant dated November 23, 1875, was accompanied by the following affidavit and receipt, now on file in the Comptroller's office:

'STATE OF NEW YORK, }
ALBANY CITY AND COUNTY, } *ss.:*

T. J. Sullivan, of Albany, New York, being duly sworn, deposes and says, that the account rendered and the articles specified in the annexed bill, iron beams and girders furnished in accordance with contract, $59,961.82, were actually furnished as charged to the 'New Capitol Commission,' for the use of the State; that the amounts stated therein are the true and correct amounts due for the said articles and that the prices charged for the said articles as stated in said account are the fair cash market prices for the same, as this deponent believes, and that the quantities and amounts are correctly stated in said account.

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[36] The Sullivan claim was included in appropriations made by L. 1883, chapter 521, for the payment of awards made by the State Board of Audit.

(Signed) T. J. SULLIVAN.

Subscribed and sworn to this 23d day
of November, 1875, before me.
(Signed) HENRY GALLIEN,
Notary Public, Albany, N. Y.'

The following receipt is also attached to the warrant:

'TREASURER'S OFFICE,
STATE OF NEW YORK.

Received from Thomas Raines, Treasurer of this State, sixty-nine hundred and sixty-one dollars and eighty-two cents in full of the above warrant.

Albany, November 23, 1875.

(Signed) T. J. SULLIVAN.'

Among other stipulations contained in the contract was the following:

'It is further agreed between the said parties that this contract is entered into upon the condition that the said party of the second part shall not apply to the Legislature for any compensation over and above the prices named in this contract for any beams, girders, or other material delivered.'

It therefore appears that the account was audited and settled by the New Capitol Commissioners in full conformity with law, and liquidated by the Comptroller upon an unqualified voucher from the claimant, who also swore that 'the account rendered and articles specified in the annexed bill, iron beams and girders furnished in accordance with contract $59,961.82, were actually furnished as charged to the New Capitol Commission for the use of the State; that the amounts stated therein are the true and correct amounts due for the said articles, and that the prices charged for the said articles as stated in said account are the fair cash market price for the same.' The evidence before the Board of Audit failed to disclose these detailed circumstances. It is safe to assume that with a full and fair presentation of the case the Board of Audit would never have made this award.

Added to the other objections to this item, it is in fatal conflict with the Constitutional restriction, which prohibits the Legislature from granting any extra compensation to any public officer, servant, agent or contractor.[aa] This claim having been duly audited and settled, any further allowance must be regarded as extra compensation.

Items in the paragraph making appropriations for the commissioners of quarantine, which read as follows: 'For repairs of dock, and for dredging at upper boarding station, one thousand dollars; for cutting and grading roadway at upper boarding station, in fulfillment of contract made by the State on the purchase of the property in 1873, one thousand one hundred dollars; for repairs of the hospital ship Illinois, five hundred dollars; for repairs of the steamboat N. K. Hopkins, five hundred dollars.'

These several items are objected to and not approved, for the reason that the objects indicated are proper to be paid for out of the general appropriation for the 'care, maintenance and repair of the quarantine establishment,' and therefore special appropriation is not necessary to provide for them.

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[aa] Const. 1846, art. 3, § 24, added 1874.

'For the commissioners of quarantine to pay for work, labor and services rendered, and materials supplied by Henry P. Kirkham, in the repair of the hospital ship 'Illinois' and the steamer 'N. K. Hopkins,' in 1879, fifteen hundred and twenty dollars and forty-one cents.'[37]

This item is objected to and not approved, for the reason that the claim should be passed upon by the Board of Audit. The Legislature is expressly prohibited from auditing or allowing a claim of this character.[bb]

'For the State Normal and Training School at Oswego, for the instruction of teachers in a kindergarten department in connection with said school, to be expended upon the approval of the Superintendent of Public Instruction, two thousand dollars.'

This item is objected to and not approved, for the reason that abundant provision has already been made for instruction of teachers in the normal schools.

'To reimburse the several counties of this State, for the care and maintenance of State prisoners in the several penitentiaries of this State, and to pay the several counties for cost of maintaining criminals under chapter 176 of the Laws of 1880, the sum of thirty thousand dollars.'

This item is objected to and not approved, for the reason that the ordinary appropriation for the purpose indicated is deemed ample to discharge all just obligations of the State to the several counties for the care and maintenance of State prisoners. While the penitentiaries are offering to keep United States prisoners without cost, besides paying for their transportation, there is no good reason why the State should be expected to pay an extraordinary rate for its prisoners, especially when they can be provided for in the State prisons without such expense."

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[37] An act passed in 1885, chapter 408, authorized the Board of Claims to hear and determine the Kirkham claim.

[bb] Const. 1846, art. 3, § 19, added 1874.

June 28.

**Veto of Assembly bill, entitled "An act to provide for the construction, maintenance and operation of street railroads in cities, towns and villages."**

"Whatever merit of a general character this bill possesses, it seems to be outweighed by objections made by the mayor and comptroller, as well as by citizens of the city of New York, who claim that the public interests of that city are not sufficiently protected from abuse. The third section of the bill provides that the local authorities of the city of New York shall not consent to the construction of any surface railways in said city without securing payment into the city treasury of such consideration as said authorities shall determine; nor shall they consent to the location of a surface railway in Broadway from the Battery to Fourteenth street, without first securing payment to the city treasury of a bonus of at least $750,000, and such additional consideration as said authorities may see fit to prescribe.

During the last thirty years immense private fortunes have been accumulated from street railway franchises in the city of New York, which, owing to inconsiderate legislation, have been granted without adequate compensation to the city. Had there been incorporated into the laws authorizing these grants, suitable provisions for securing to the city a portion at least of their ultimate value, New York would now realize a revenue from such source that would largely diminish the burden of taxation imposed to defray the expenses of its government. The future growth of the metropolis will make many franchises hereafter granted, very valuable, and hence, profiting by unmistakable errors in past legislation, subsequent laws should securely provide for the payment into the city treasury, of a reasonable percentage on gross receipts; or, instead thereof, should provide for reduced charges or fare, in order that the people shall obtain direct benefit from the appreciated value of the respective franchises.

Two distinct objections may be stated to the provision of this bill authorizing the local authorities that grant the use of streets, to fix the rate of compensation for the same. 1. The money value of these railroad franchises cannot well be estimated in advance. It remains an unknown quantity until determined by a practical method of fixing a percentage on the earnings or gross receipts. This principle should be established by law, and not left to the option of the common council. 2. Experience has demonstrated in repeated instances, that the common council of a great city is not the safe custodian of such interests and authority as proposed in this bill. It has happened often, that selfish considerations have intervened and controlled the action of such body, to the manifest detriment of the public welfare. The fact that this is a general measure, which, if enacted, would become the fixed law relative to street railway franchises, the conferring on the common council of New York city authority to determine the rate of compensation in such cases, renders it a matter of more than ordinary concern."

July 1.

**Veto of Assembly bill, entitled "An act to establish a Civil Code."**

"This bill makes many manifestly radical changes in long and well established laws and usages beyond what could have been contemplated in the Constitution with reference to codification.[cc] Ideas and principles are attempted to be introduced, which as separate propositions, in independent bills, would hardly command support. To act hastily, or unadvisedly, in accepting such a measure, and giving it the force of law, would be unwise and dangerous. The appropriate time to consider its provisions, some of which are very generally criticized and condemned, is before it becomes a complete enactment. It is almost an accepted fact that this code, if approved, would require amendment in many important particulars. In this view and for such purpose one branch of the Legislature, after the passage of the bill, provided for a commission to examine it during the adjournment, and report proper and necessary amendments at the next session. This is an implied admission, at least, that in its present shape the code is imperfect, and susceptible of such change and improvement as to command consideration of a special committee; and for the purpose and to the end that defects be eliminated the time of its taking effect was postponed until May 1, 1884. To pass laws with conceded faults, and defer their operation until some other Legislature shall have corrected them, is unsafe and unadvisable, especially in so important a case as that of a code affecting almost every relation of life. Too much reliance has been placed on future Legislatures to correct mistakes and supply needed amendments. The responsibility should not thus be transferred, with no kind of authority to compel it. To avoid possible wrong, or the omission of the succeeding two Legislatures, it seems preferable to remit the bill in its entirety for legislative action, rather than give it now the form and force of an enactment."

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[cc] Const. 1846, art. 1, § 17.

July 1.

**Veto of Senate bill, entitled "An act reappropriating money for the erection of an armory in the county of Kings."** [38]

"While nominally appropriating one hundred thousand dollars for the erection of an armory for the National Guard in the city of Brooklyn, this bill fails to make any provision for the payment of the money out of the treasury. Hence, the only effect of its approval would be to set aside, in the State treasury, this amount of money for the purpose indicated to await the action of a future Legislature. Nothing could be done by the commissioners charged with the duty of erecting the building until further legislation be secured; and inasmuch, therefore, as the enactment of this bill would accomplish no substantial progress toward the object sought, it is quite useless to approve it."

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[38] The Kings County armory bill was passed again in 1883, and became chapter 33.

July 1.

**Veto of Assembly bill, entitled "An act to provide for the enrollment of the militia for the organization and government of the National Guard of the State of New York, and for the public defence, and entitled 'The Military Code.'"[39]**

"Desirable as a new Military Code may be, this bill contains some features which forbid its approval. From beginning to end it involves an increased expenditure for military purposes. The very lowest estimate made of the increased cost of the military establishment under this code, as compared with the present law, and on a calculation for the smallest minimum of force, and without estimating for any actual service whatever, may be stated at $95,000 per annum; and this is probably $20,000 or $30,000 lower than experience would demonstrate. Should the necessity for considerable service arise by reason of any disturbed condition of the public peace, the increased expense consequent upon the enactment of this code, would be very much larger than the amount stated. It is difficult to realize what advantages could follow the enactment of this measure to justify such enlarged expenditures.

Changes in the mode of military appointments provided in the bill require that it should have been passed by a two-thirds vote in order to conform to the constitutional provision in this regard; whereas, it is certified by the officers of the two houses as having been passed by a three-fifths vote.[dd] It may be fairly held, therefore, that the law, if enacted, would be challenged and set aside by reason of the insufficient certification of its adoption. Another very serious defect is found in the omission of any provision for the auditing of accounts and claims against the State for military purposes. This of itself is a very substantial if not wholly fatal objection to the bill. There are also other features which are subject to serious criticism, but it is hardly necessary to enter into further detail on the bill at this time.''

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[39] The Military Code was passed in 1883, and became chapter 299. [See 1880, note 5, *ante*, p. 428.]

July 1.

**Veto of Assembly bill, entitled "An act to provide for the more speedy and economical settlement of the affairs of savings banks, trust companies, loan and trust companies and insurance companies organized or incorporated under the laws of this State, which are or may become insolvent."**

'' Fully realizing the force of public sentiment demanding the abolition of abuses heretofore frequently occurring in the winding up of insolvent corporations, it has been my earnest desire to approve this measure. Careful consideration of the various provisions of the bill, however, impels me irresistibly, but reluctantly, to the conclusion that it cannot safely be allowed to become a law. In two essential particulars there is serious question whether it is not in direct antagonism with the Constitution. Should the affirmative view be confirmed by judicial decision the act would be worse than useless, and inevitably result in serious complications and much expensive litigation.

The first section provides that ' all property and estate, real and personal, moneys, credits, claims and effects of every name and nature now vested in any receiver of any insolvent savings bank, trust company or insurance company shall on motion of the Attorney General be transferred to and vested in the Treasurer of this State, who on such motion shall be made receiver of the same, and shall forthwith take possession thereof.' Section two directs that 'the treasurer as receiver of any such insolvent corporation, shall forthwith proceed with diligence to collect and reduce to money all its estate and assets and distribute the same among the parties entitled thereto according to law, and within one year after he shall become receiver the affairs of such insolvent corporation shall be settled. For sufficient cause shown, the courts, upon application of said Treasurer, may extend the time for that purpose, not to exceed six months.' The Constitution vests the Supreme Court 'with general jurisdiction in law and equity subject to such appellate jurisdiction of the Court of Appeals as now is or may be prescribed by law.'[ee] While it is not here questioned that laws may be enacted to regulate the appointment of receivers thereafter, it is by no means clear that the Legislature can arbitrarily remove an officer of the Supreme Court in actual possession of an insolvent estate of which the court has already acquired jurisdiction in pursuance of the Constitution and statutes, and designate another officer to receive and administer the trust without reference to the judgment or discretion of the court. The proposition that the assets now vested in receivers *shall,* on motion of the Attorney General, be transferred to and vested in the Treasurer, can only be regarded as a legislative direction that the Supreme Court shall make a certain order as to property actually in its custody and under its control, for the purpose of final adjudication. This is a manifest interference with the jurisdiction of the court in a matter actually in litigation relating to property held by the court to await its decision.

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[dd] Const. 1846, art. 11, § 6.

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[ee] Const. 1846, art. 6, § 6, am. 1869.

The ninth section provides that the 'Treasurer as such receiver shall forthwith deposit all moneys that shall come into his hands from the assets of insolvent corporations in such banks in Albany as may be designated to receive on deposit the moneys of the State to the credit of the Treasurer as receiver of the corporation to which it shall belong, and such moneys shall be disbursed by checks made by the Treasurer as receiver, countersigned by the Attorney General.' The Constitution says 'no moneys shall ever be paid out of the Treasury of this State, or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law, * * * and every such appropriation shall distinctly specify the sum appropriated, and the object to which it is to be applied.'[ff] Will not the moneys to come into the hands of the Treasurer as receiver constitute various 'funds under the management of the State?' If so, they must remain in his custody until by law the funds are duly appropriated. Such delay would cause undue hardship to creditors who should be paid as promptly as possible. The Treasurer is not to be receiver as an individual, but receiver, *ex officio*. If the office of Treasurer become vacant, the receivership will also be vacant; and the succeeding Treasurer will become receiver by virtue of his office. How, then, is the receiver to be separated from the Treasurer? And how are the funds in his hands to be kept out of the Treasury? What is the Treasury of the State mentioned in the Constitution? It is not the particular place for the keeping of money like the United States Treasury. It is simply the designation or name for the moneys in the custody of the Treasurer; but actually deposited in certain designated banks to his credit, precisely as this bill requires the deposit of moneys to the credit of the Treasurer as receiver. How, then, will these funds differ from other funds under the management of the State in its Treasury? Section eleven directs that any dividend due a creditor, which shall not be called for within one year, 'shall be covered into the sinking fund of the State for the benefit of the owner thereof.' This language indicates that the money is already in the Treasury so as to be covered into the sinking fund; otherwise, it would need to be paid into the Treasury to the credit of the sinking fund.

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[ff] Const. 1846, art. 7, § 8.

Aside from the foregoing questions there are other features of the bill, the propriety and application of which may be seriously doubted. Thus: 1. Depriving the courts of all discretion as to the amount of security to be given by the Treasurer as receiver. Before entering upon his duties he is to execute a bond for $25,000, but it is not quite certain whether this means one general bond or a separate bond in each case. 2. The limited time in which each estate is required to be closed up. In the case of serious litigation it might be impossible to properly administer upon an important corporation within eighteen months; still the terms of the bill imperatively require every case to be closed at that time. 3. Prohibiting an appeal from the order of the court on the report of a referee fixing the compensation of counsel. This would make possible the repetition of extravagant allowances aimed to be prevented, and which have heretofore brought scandal on the law and the courts. 4. Removing the business of a local corporation to Albany may often lead to serious inconvenience and disadvantage in the conduct of its affairs. 5. Allowing the Treasurer and the Attorney General to determine the amount of compensation to be paid to their assistants out of the assets of insolvent corporations without confirmation by the court, affords unusual latitude. 6. Prohibiting the court to permit the intervention of an interested party except on the certificate of the Bank Department or Insurance

Superintendent, is calculated to work harm. The discretion of the court should never be abridged to such extent. 7. Covering unclaimed dividends into the sinking fund at the expiration of one year would also be likely to cause unreasonable trouble to parties entitled to their money on demand. 8. Making the assignment of a claim against an insolvent savings bank or insurance company invalid after the date such corporation shall be adjudged insolvent would frequently cause inconvenience, and sometimes actual suffering. Besides, to deprive a person of the right to assign a claim comes little short, if it does not in effect deprive one of property without due process of law."[33]

July 1.

**Veto of Assembly bill, entitled "An act to authorize and empower the State Board of Audit to hear, audit and determine the claim of Cayuga County for moneys expended in the trial of convicts for crimes committed during their imprisonment in Auburn State Prison, and to make an award therefor.** [See note 32.]

"This bill is designed to authorize the Board of Audit to hear, audit and determine the claim of Cayuga county for moneys expended for the criminal prosecution and conviction of eight prisoners in the Auburn State Prison, charged with crimes committed therein, during several years from 1873 to 1877, and to adjust and award the amount thereof. Six of these prosecutions occurred during the years 1873, '4 and '5, and are therefore clearly barred by lapse of time pursuant to the provisions of the fourteenth section of article seven of the Constitution. It is, therefore, incompetent for the Legislature to authorize the Board of Audit to audit and allow claims thus barred."

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[33] Const. 1846, art. 1, § 6.

July 1.

**Memorandum filed with Assembly bill, chapter 410, consolidating the local laws relating to the city of New York.**

"The bill to consolidate and declare the local laws relating to New York city, consisting of seven hundred and fourteen printed pages, reached the Executive Chamber the day following the adjournment of the Legislature. It would, of course, be impossible to make an exhaustive examination of a bill of such magnitude in the brief time allowed by the Constitution,[hh] crowded as it has been with the labor of examining more than two hundred other bills. Such attention as it has been possible to devote to this measure makes it appear to be a faithful and careful codification of existing laws. This view is confirmed by the statements of the comptroller and corporation counsel of the city of New York, and also by the committee designated by the Bar Association to examine the bill and report thereon. The measure was prepared and presented for the consideration of the Legislature, pursuant to chapter 594 of the Laws of 1880, and chapter 572 of the Laws of 1881. As it does not take effect until March 1, 1883, the next Legislature will be enabled to correct any errors which may meantime be discovered."

July 1.

**Memorandum filed with Assembly bill, chapter 385, making an appropriation for the commissioners of emigration.[40]**

"Action on this bill has been delayed until the last day of the Constitutional limit, in the hope that Congress would pass the immigrant tax bill, and thus provide for the future necessities of this service. At this date, however, the fate of that measure is still undetermined, having yet to depend on the action of the Senate and the President. The steamship companies have been constrained to enter into a temporary compromise from which they are liable to recede in the event of the failure of the Congressional bill. Meantime the Commissioners of Emigration having pressing need of the $50,000 provided by this bill to repair the buildings belonging to the State on Ward's Island, and hitherto sadly neglected; and, also, about $40,000 to discharge obligations incurred prior to the beginning of payments by the steamship companies, and interest on the Ward's Island mortgage due this day.

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[hh] Const. 1846, art. 4, § 9, am. 1874.

[40] Congress passed a bill, which became a law August 3, 1882, to regulate immigration, and which imposed a duty of fifty cents on immigrants. These duties were to constitute the immigrant fund, to be disbursed under the direction of the Secretary of the Treasury for expenses incident to immigration, and for the care and relief of immigrants.

The Commissioners have pledged themselves, over their individual signatures, that, in case Congress imposes the immigrant tax, or that the steamship companies continue their payments, as at present made, no more than $90,000 of this appropriation shall be drawn from the State treasury. Under these circumstances the only prudent course now presented is to approve the bill, in the hope that the $90,000 only will be required. In the event of the failure of Congressional action, and the refusal of the companies further to contribute, the honor and best interests of the State, and of humanity, seem to demand a continuance of this burden until relief shall come, as it must finally come, from national legislation."

July 3. The omnibus veto included the following bills:

Relating to street cleaning in New York.

For the relief of William H. Wilson, of New York.

Concerning the office of Commissioners of Jurors, New York.

To regulate the duties, etc., of pawnbrokers.

Relative to salaries of certain members of the Police and Fire Departments of New York.

Amending excise law — applicable only to New York city.

School teachers' pension, New York city.

Additional public baths, New York. (2.)

Providing for payment of certain expenses in proceedings as to term of office of Surrogate, New York city.

Relative to police matrons.

For the preservation of public records in New York city.

Incorporating the New York Fruit and Spice Exchange.

Relating to claim of certain district court janitors.

Regulating the sale of tickets to places of public amusement.

Regulating management of places of public amusement.

Providing certain charitable institutions in Brooklyn with water free of charge.

Relating to sewers and drainage in Brooklyn.

Relating to exits from theaters in Brooklyn.

Reducing number of Justices of the Peace in Brooklyn.

Relating to the appointment and dismissal of court officers in Kings county.

For the improvement of Johnson avenue, Brooklyn.

Relating to Prospect Park (Brooklyn) lands.

Amending the Brooklyn charter.

Relative to the Police Commissioners of New Lots, Kings county.

Relative to the common lands of Gravesend, Kings county.

Amending the law authorizing the business of banking.

Relating to the use of Busti Terrace, Buffalo, by the Mechanics' Institute.

Amending the law relative to the protection of children.

Regulating the charges of marine insurance companies.

Relative to unpaid taxes in the city of Buffalo.

To revise the charter of the city of Buffalo (3).

Relative to the First New York Volunteers.

Relative to an armory in Brooklyn.

Relative to Mill Creek, Schenectady city.

Providing for a certain payment to Mrs. Mullin and Mrs. Lamont.

Relative to highway near Fort Miller (Washington county) bridge.

Relative to a nuisance near Spencerport.

Relative to Griffin Creek feeder.

Relative to the construction of fishways.

Relative to a bridge across the Tonawanda creek.

For the relief of John E. Andreus and Phineas Kent.

Relative to the claim of John and James Tyrrell.

Relative to claim of David F. Mink.

Relative to claim of Oliver Preville.

Relative to certain claims against the State.

Releasing the interest of the State to the heirs of Thomas Shriver.

Releasing the interest of the State to the heirs of Margaret Joyce.

Releasing the interest of the State to Francisca Neusch.

Releasing the interest of the State to Andrew McGee.

Releasing the interest of the State to Ernest Steche.

Releasing the interest of the State to John Pax.

Releasing the interest of the State to Mary Corbett.

Amending the Penal Code, Sec. 704.

Amending the Code of Civil Procedure (8).

The Albany city charter.

The Albany County Clerk's fee bill.

The Albany City Assessors' bill.

Relative to the West Troy Fire Commissioners.

Amending the Revised Statutes (3).

To incorporate the Society of St. Vincent de Paul, Yonkers.

Relating to the village of Greenport, Long Island.

To protect the patrons of butter and cheese factories.

Amending the charter of Tonawanda.

Relative to the enforcement of taxes in Jefferson county.

Relative to the village of Mt. Vernon, Westchester county.

Amending the Binghamton police law.

Relative to the Elmira Firemen's Association.

Repealing the Westchester county town auditor's law.

Amending the general railroad law.

Authorizing the recording of certain papers in the Onondaga County Clerk's office.

Amending the act concerning medical science.

Amending the laws of 1850 relative to railroads.

Amending the law relative to the construction and operation of railroads.

Amending the laws relative to manufacturing, mining and other corporations.

Relating to the construction of sewers in Schenectady.

For the construction of a monument by towns of Sanford and and Deposit, in Broome and Delaware counties.

Relative to the village of Prattsburgh, Steuben county.

Amending the law authorizing the recording of certain documents.

Fixing the northerly boundary of the town of Brutus, Cayuga county.

To exempt certain towns in opening roads through vineyards.

To incorporate the Rome Street Railroad Company.

Relative to the fire limits of Pulaski.

Relative to the Commissioners of the State Survey.

Relative to the village of Geddes, Onondaga county.

Fixing the salary of Onondaga supervisors.

Relating to legislative employees.

Amending the charter of Greenbush.

Incorporating the Oatka Hose Company, of Le Roy.

Establishing the boundary line of Union School in Wawarsing, Ulster county.

Relative to St. Joseph's Institute for Deaf Mutes.

Repealing the law relating to the salary of the judge of Greene county.

Relating to the town of Pelham.

Fixing and regulating the salaries of County Treasurers.

Providing for voting by ballot at town meetings to raise money.

Relative to Mountain View Cemetery Association, Broome county.

For the preservation of fish in Salmon river.

To change the name of the Reformed Low Dutch Church of Taghkanick.

Relative to Mt. Vernon, Westchester county.

Relating to school moneys in Oyster Bay, L. I.

For the collection of taxes in Suffolk county.

To facilitate the improvement of highways.

To incorporate the Tonawanda Gas Company.

To extend the time for the completion of the Erie and New York City railroad.

Relating to water-works companies in cities and villages.

Amending the corporation tax law.

Incorporating stage and omnibus companies.

Relating to Yonkers police force.

Authorizing an assessment for railroad purposes in the towns of Philadelphia, etc., Jefferson and St. Lawrence counties.

To enforce the laws and preserve order.

Relating to the village of Albion.

Amending the charter of Elmira.

For the improvement of a public square in Richford, Tioga county.

Relative to town auditors of Westchester county.

Authorizing the Hillside Cemetery Association, Madison county, to control certain lands.

In relation to the use of books belonging to the Sixth Judicial District library.

Concerning the taking of lands belonging to the New York Soldiers' Home for railroad purposes.

Amending the law for the formation of gaslight companies.

Relating to the services of stenographers.

For bridges across the Hudson and other rivers.

To regulate the sale or manufacture of oleomargarine or lard cheese.

## PURCHASE OF THE CLINTON PAPERS.

In 1853, by chapter 615, the following provision was made for the purchase of Clinton papers. See *ante,* p. 638.

"To the Secretary of State, for the purchase of the correspondence and other papers of George Clinton, the first Governor of this State, being the papers lately deposited with the said Secretary of State for inspection, the sum of two thousand five hundred dollars, said papers to be deposited in the State Library, for the arranging, indexing, binding and lettering of the same, the further sum of five hundred dollars."

The supply bill of 1881, chapter 475, appropriated $3,500 to the trustees of the state library for arranging and indexing the Clinton manuscripts and other State papers belonging to the State and deposited in the library.

On the 17th of February, 1882, the trustees of the State Library transmitted to the assembly, the following report concerning the Clinton papers:

"To the Honorable the Legislature of the State of New York:

The Trustees of the State Library respectfully report to your Honorable body the action taken by them under authority of chapter 475 of the Laws of 1881, in relation to the arranging and indexing of the Clinton manuscripts, and other State papers belonging to the State, and deposited in the library. The trustees were fortunate in being able to secure for this work Hon. George W. Clinton, a member of the family which included both the Governors — George Clinton and De Witt Clinton. He entered upon the task assigned by the Legislature with the utmost enthusiasm, and has made such progress as to disclose the importance of the undertaking, and the value of the historical material possessed by the State.

The report made by Mr. Clinton as to the character and progress of his work is appended to this report. In order that this important enterprise may be continued, and the invaluable services of the present editor in charge may be retained, the trustees respectfully request that an appropriation equal to that of last year may be made for this purpose.

Albany, February 8, 1882.

Respectfully submitted,
H. R. PIERSON,
Chancellor.

DAVID MURRAY, Secretary."

## REPORT ON THE GEORGE CLINTON PAPERS.

### BY GEORGE W. CLINTON.

To the Regents of the University of the State of New York:

My acceptance of your appointment as 'editor in charge of the work of arranging and indexing the Clinton manuscripts and other State papers belonging to the State and deposited in the State Library,' made a change of residence absolutely necessary, and, as soon as possible, I returned to this city of my youth and entered upon my new duties. Upon an almost momentary consideration of the work defined by the statute, I perceived that a due execution of the grand scheme of the Legislature demanded an indexing of the George Clinton papers at the very outset — that the making of this index would consume much time, and that, though the labor might, by many good people, be considered as almost purely clerical, I could not, conscientiously, intrust it to any one else. In order to appreciate and arrange such a mass of papers as this, somewhat miscellaneous in their character as they are, and yet, in the main, bearing as they do upon those momentous questions of policy and problems of civil liberty and free government which our fathers solved by their wisdom and decided by the sword, one must have such an intimate and thorough acquaintance with them as can be most perfectly acquired only by actual manipulation and study. To this task, therefore, I have, so far, devoted all, or nearly all my time, hoping that, when the essential preliminary work is over, I may be permitted, by research and annotation, to supply explanatory facts and make more clear the title of our statesmen to fame, and of our State to honor.

The George Clinton papers are calendared. In other words, they are numbered consecutively, and placed in twenty-three folio volumes, in the order of time, and each volume contains a list of the numbers it contains and a brief note of the contents of the paper or papers designated by such number. A calendar, however meritorious, and however useful it may be to the deeply read and practical annalist or historian, can be of very little service to the raw student and the casual searcher. It wants fullness and minuteness, omits minor names, and takes no notice of the petty seeming facts and incidents which are so great to little men, and which so often flavor common life, cause great events and color history. An index ought, like a great river, the carrier of commerce and creator of fertility, to be 'without overflowing, full.' It ought to be so framed as to yield readily the answer, if there be one in the body of the papers, to every question of every reasonable questioner, though he be not technical nor learned. The Clinton papers, like all old manuscripts, present, occasionally, the usual obstacles to mastering them, such as unfamiliar and almost undecipherable writing, faded ink, spelling which is neither phonetic nor uniform nor conformed to any rule, and the assumption by their writers of a knowledge, by their immediate readers, of events and names and incidents, which they have unexpressed and are wholly unknown to us. The calendar comprises 6,307 numbers. Of these I have carefully perused 2,736, and taken notes from them, under what seemed to me at the time appropriate heads for the index, of every name and incident and matter which ought, in my judgment, to enter into it. When all the numbers have been thus dealt with, then will come the pleasant but laborious task of arranging the great mass of diverse matters and forming it, with reasonable compression, into an index. After that will come the collecting of suppletory matter, and the preparing of notes of an explanatory nature, to be drawn mainly from our provincial and revolutionary statutes, published histories, local and general, biographies, State papers and historical collections. Then succeeds the great work of ascertaining what other State papers exist in the library, indexing any that may need it, and preparing a lucid and orderly synopsis of the whole.

I have, in my exploration, just entered upon the year 1780, a time when nature herself, in her appointed course, fought bitterly against us, and great hearts were anxious exceedingly, and even our stout-hearted Governor, in his depression, wrote thus to Robert R. Livingston: 'I have not felt equal distress at the situation of our affairs since the commencement of the war.'* Heaven rather than their own wisdom or valor gave the Confederacy a happy deliverance and a triumph, the harbinger of freedom for all our race.

Having scrutinized 2,736 numbers only, any remark I have made or may make as to the quality and importance of the collection must be confined to them. The papers are much more numerous than the numbers. They comprise a very large number of the drafts of George Clinton's answers to correspondents. When blank space enough was left in a letter to him, he was very sure, from economy or some notion of convenience, to draft his answer thereon, and the letter and answer make one number of the calendar. Then again the calendar often groups under one number several papers, and they are often replete with incidental matters, essential to an index, of which it takes no notice. A paper or papers, calendared as one number, seldom requires less than three entries, and sometimes requires from ten to one hundred entries for the index.

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* See letter from Governor Clinton to Chancellor Livingston, January 7, 1780. Clinton Papers, Vol. 5, 445, 447.

This collection is very far from presenting a continuous history, State or national, and letters (I trust not irrecoverable) are sometimes wanting, which are, in themselves, necessary to the understanding of papers which are present, or relate to projects or transactions of importance, or which, whether of intrinsic importance or not, would be dear to us for the writer's sake. By and bye I may make a list of the more important of these lacking letters, and seek your aid and counsel for obtaining them. In the meantime accept, I pray you, these examples to show my meaning. By a letter from John McKesson to George Cinton, dated November 3, 1776, it appears that Clinton had applied, through him, to the Council of Safety for leave to resign his command, and that 'the true reasons' for the request were not stated to the council; but it also seems apparent that these reasons were contained in a letter to McKesson, and that letter is not among the papers. On the 8th of March, 1778, George Clinton acknowledged the receipt of two letters from La Fayette, neither of which appears in the collection. Walter Butler's 'insolent letter' to Schuyler, touching the Cherry Valley prisoners, is not, although Gen. James Clinton's dignified answer and rebuke of it is among the papers. Charles Thompson, the secretary of Congress, on the 1st of February, 1780, reminds George Clinton that he had made a request in his letter of the 24th of November, which remains unanswered, and states that it was referred solely for the public service. I would like to know what the request was; neither it nor the letter of November 24th appear in the collection. Several letters of Washington to George Clinton are wanting;

of which I especially regret the absence of one or two in which it seems he must have stated some grand movement he had in contemplation against the enemy, but which is not disclosed in George Clinton's answers assuring him of hearty and strong co-operation.

But, making all allowance for its defect and deficiencies, there is very much of value in this collection. The glory and security of a State rests in the great body of its people; and in these papers we have, it seems to me, an almost living presentment of a people of diverse creeds and many nationalities, bound together by a common love of liberty, and who, in its assertion, voluntarily submitted to exactions and oppressions far more onerous than those which drove them to revolt. They show us that people feeding the northern army, which must else have starved or been disbanded. In the very heat of a most cruel war — a war raging on their frontiers and penetrating almost to the doors of their council house — that people framed a Constitution so grand, so equal, so protective of human rights, that philosophy everywhere applauded it, and free States took it for their model. Of them it could not be said *inter arma leges silent;* but they had the wisdom to fit their laws to the dangers and necessities of their time, and bowed their necks to a yoke, which, but for the sake of triumph in the end, would have been far more galling than that of any king or foreign parliament. These papers contain too some evidences of the purity and greatness of our statesmen which, I am pretty confident, have not been given to the public. But I must not dwell upon such topics. I anticipate finding equally good things in the unexamined papers. I am very confident that although the whole collection may add little or nothing to the main facts of our history, and fail to change in the least our estimates of the chief men of our revolution. it will contribute much matter of deep interest to the philosophy of history, and very much to the materials for the biographies of less distinguished persons, render important aid to many inquirers into the genealogies of their families, and confirm the respect due to New York for her distinguished services to her sister States and to the Confederacy, not only in war, but in laying broad and deep the foundation of human liberty and of our perpetual union.

G. W. CLINTON.

Albany, January 9, 1882.

Another appropriation of $3,500 for the same purpose was made by the Supply bill, of 1882, chapter 362.

In 1895, by chapter 393, the office of State Historian was created for the purpose of publishing various papers relating to the history of the State. Hugh Hastings was appointed historian in 1895, and reappointed in 1899 and 1903. The State Historian has, during the progress of his work, published several volumes of the Clinton papers.

Grover Cleveland

**1883. JANUARY 2. LEGISLATURE, ONE HUNDRED AND SIXTH SESSION.**

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## GROVER CLEVELAND, Governor.

## ANNUAL MESSAGE.

## STATE OF NEW YORK:

Executive Chamber,
Albany, *January* 2, 1883.

To the Legislature.— In obedience to the provision of the Constitution which directs that the Governor shall communicate to the Legislature, at every session, the condition of the State, and recommend such matters to them as he shall judge expedient, I transmit this, my first annual message, with the intimation that a newly elected executive can hardly be prepared to present a complete exhibit of State affairs, or to submit in detail a great variety of recommendations for the action of the Legislature.

From the statement furnished me by the Comptroller, the details of which will be found in the annual report of that officer, it appears that the finances of the State are in a satisfactory condition.

The total funded debt on the 30th day of September, 1882, after deducting an unapplied balance in the Sinking Fund of the Canal Debt, was $6,385,356.30. Of this sum, $122,694.87 is the amount necessary to yield, at six per cent. interest, the sum required to pay the annuities to Indians; $3,000 is the unclaimed bounty debt; and the remainder, $6,259,661.43, represents the Canal Debt. The only change in the funded indebtedness of the State during the last fiscal year was a contribution of $309,717.00 to the Sinking

Fund, thus reducing by that sum the debt remaining unprovided for on the 30th day of September, 1881.

The aggregate receipts of the State Treasury during the last fiscal year, including a balance from the previous year amounting to $5,531,858.71, were $17,735,761.59; the payments during the same period amounted to $13,898,198.21, leaving a balance in the treasury at the beginning of the current fiscal year of $3,837,563.38.

The amount received from taxes on corporations during the last year was $1,539,684.27, being an increase of $446,959.11 over the previous year.

The rate of taxation for the current fiscal year was fixed by the last Legislature at $2\frac{45}{100}$ mills on the dollar. This, it is estimated, will yield on the present valuation of property a revenue of $6,820,022.29.

The imperfection of our laws touching the matter of taxation, or the faulty execution of existing statutes on the subject, is glaringly apparent.

The power of the State to exact from the citizen a part of his earnings and income for the support of the Government, it is obvious should be exercised with absolute fairness and justice. When it is not so exercised, the people are oppressed. This furnishes the highest and the best reason why laws should be enacted and executed which will subject all property, as all alike need the protection of the State, to an equal share in the burdens of taxation, by means of which the Government is maintained. And yet it is notoriously true that personal property not less remunerative than land and real estate, escapes to a very great extent the payment of its fair proportion of the expense incident to its protection and preservation under the law. The people should always be able to recognize, with the pride and satisfaction which are the strength of our institutions, in the conduct of the State, the source of undiscriminating justice, which can give no pretext for discontent.

## CANALS.

The revenues and expenditures of the canals for the year ending September 30, 1882, were as follows:

### REVENUES.

| | |
|---|---|
| Tolls | $647,602.88 |
| Rent of surplus water | 1,910.85 |
| Miscellaneous sources | 10,456.62 |
| | $659,970.35 |

### EXPENDITURES.

| | |
|---|---|
| For ordinary repairs: | |
| Superintendent of Public Works | $143,276.81 |
| Engineers | 30,000.00 |
| Section superintendents | 361,906.04 |
| To collectors of canal tolls for salaries, clerk hire, pay of inspectors and office expenses | 35,337.23 |
| Weighmasters and assistants, for salaries and office expenses | 2,889.83 |
| Salaries chargeable to the annual revenues, refunding tolls, printing and miscellaneous expenses | 80,100.10 |
| | $653,510.01 |
| Surplus revenue | $6,460.34 |

For the year ending September 30, 1881, the revenue failed to meet the expenditures by the sum of $205,642.45.

The following is a statement of freight carried and tolls collected from the opening of navigation to December first in the years 1881 and 1882:

| | Tons moved. | Tolls collected. |
|---|---|---|
| 1882 | 5,421,720 | $655,195 51 |
| 1881 | 5,143,877 | 631,621 11 |
| Gain in 1882 | 277,843 | $23,574 45 |

To provide for the deficiency in the Sinking Fund under article 7, section 3 of the Constitution, it will be necessary to raise by tax the sum of $1,038,198.34, which will be equal to about $\frac{33}{100}$ of a mill on the present valuation.

The Superintendent of Public Works estimates that the tolls received since September 30, 1882, with an unexpended appropriation in the Canal Fund, amounting together to about $588,000, will be ample to make the necessary repairs and operate the canals until the close of the present fiscal year.

The adoption of the amendment to the Constitution abolishing tolls on the canals,[a] renders it necessary for the present Legislature to provide by tax for their maintenance and repair for the year ending September 30, 1884.

The amount required for these repairs the Superintendent estimates at $500,000. Some legislation will also be necessary, under our new canal policy, to provide for the inspection of boats and the collection and preservation of statistics.

Since, by the adoption of the constitutional amendment,[b] the cost of maintaining the canals is to be met by a tax upon all the property of the State, it is our plain duty to deal with this subject with strict economy. The safeguards heretofore existing in the Constitution, which protected the taxpayers from unlimited expense in the management and repair of the canals, having been relinquished by the people, this act is by no means to be regarded as an indication that they have forgotten the time when the extravagance and fraud connected with the canals were a scandal and reproach to the State. They have, in their devotion to their great water-ways, and in the fear that the limitations of the Constitution might impair their usefulness, surrendered the protection thus afforded, together with the revenue derived from tolls, and have intrusted the whole matter to their chosen representatives. In the execution of the trust committed to us under such circumstances, all propositions and schemes for the enlargement of the canals or the expenditure of large sums of money in their alteration, should, in my opinion, be stubbornly opposed, at least until the effect of the abolition of tolls is fully apparent. At the present time, what the people want, and what they will demand, is the management of the canals as they now exist in such manner that their utmost capacity shall be made available at the lowest possible cost.

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[a] Const. 1846, art. 7, § 3, am. 1854, 1874, 1882.

[b] Const. 1846, art. 7, § 3, am. 1882.

Considerable sums of money which have been appropriated for specific canal purposes, still remain in the treasury, the expenditure of the same having been heretofore prevented by the prohibition of the Constitution. It is suggested that these moneys might well constitute a fund to be drawn upon to meet unforeseen emergencies.[1]

## CANAL APPRAISERS AND AUDITOR.

From a statement furnished by the Canal Appraisers, it appears that the number of claims filed during the last fiscal year was eighty-nine, amounting in the aggregate to $168,652.57. During the same time 273 claims, amounting to $866,741.58, have been disposed of, the aggregate of awards made upon the same amounting to only $19,644.76.

Since the close of the fiscal year a large number of other claims have been adjudicated, which leaves at the present date about 400 to be acted upon.

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[1] Chapter 165, passed March 31, abolished the offices of collectors of canal tolls, weighmasters and assistant weighmasters upon the canals.

Information relating to canal statistics was provided for by chapter 244, passed April 17, which required reports on this subject by the Superintendent of Public Works.

Chapter 373, approved May 10, imposed a tax of 73/100ths of a mill for the benefit of the canal debt sinking fund.

Chapter 495, approved June 2, imposed a tax of three-tenths of a mill for general canal purposes.

At the close of the year ending September 30, 1881, there appears to have been 741 claims on file awaiting determination.

The expense attending the maintenance of this Board, exclusive of the payment of awards, for the last fiscal year, was $39,639.20, of which sum $15,280.07 was paid to various attorneys employed to defend, on the part of the State, against claimants.

I desire to submit in this place for consideration the question whether it would not be well to establish in the place of the Board of Canal Appraisers and the Board of Audit, as now constituted, some tribunal which shall have the power to hear and determine all claims against the State. It seems to me that justice to the claimants and protection to the State would be much better assured if these demands were submitted to persons whose experience and training fit them for the examination of the questions involved, according to the rules and methods which prevail in courts of justice. It is apparent that such a tribunal could be maintained, and a competent person provided as counsel to protect the interests of the State, at a much less expense than that attending the Board of Canal Appraisers and Board of Audit, and with vastly more satisfactory results.

I can see no reason why the office of Auditor of the Canal Department may not also be abolished. The cost of its maintenance during the last year is reported as being more than $22,000. Since the change in the Constitution the duties which might devolve upon that officer, could, it is believed, be well performed in the Comptroller's office with very little increase in the expense of that department.

It is supposed that the changes above suggested would result in an annual saving of more than $30,000, with no detriment to the public service.[2]

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[2] The office of auditor of the canal department was abolished by chapter 69, passed March 1, and the powers and duties of the office were transferred to the comptroller.

## PUBLIC EDUCATION.

The Superintendent of Public Instruction has furnished the following statement relative to his department, covering the year ending September 30, 1882.

| | |
|---|---|
| Total receipts, including balance on hand October 1, 1881 | $12,543,446.34 |
| Total expenditures | 11,181,986.55 |
| Amount paid for teachers' wages | 7,986,383.96 |
| Amount paid for school houses, repairs, furniture, etc. | 1,525,578.26 |
| Estimated value of school houses and sites | 30,333,641.00 |
| Number of teachers employed for the legal term of school | 20,899 |
| Number of teachers employed during any portion of the year | 31,232 |
| Number of children attending public schools | 1,041,089 |
| Number of persons attending Normal schools | 6,156 |
| Number of volumes in school district libraries | 705,812 |
| Number of persons in the State between the ages of five and twenty-one years | 1,681,113 |

The success of our common school system is so closely connected with the welfare of the State, that its satisfactory condition should be a subject of congratulation to

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A State Board of Claims was created by chapter 205, passed April 7, to be composed of three commissioners appointed by the Governor and Senate. They were to hold office six years. The same act abolished the State Board of Audit, and the office of Canal Appraiser. The Board of Claims was given general jurisdiction to hear and determine claims against the State. By L. 1897, chapter 36, the statutes relating to the Board of Claims were revised and the subject was included in the Code of Civil Procedure. The name of the tribunal was changed from the Board of Claims to the Court of Claims, and the commissioners thereupon became judges of the Court of Claims.

By L. 1906, chapter 692, the official term of judges of this court was increased to ten years.

every citizen. The number of children attending public schools during the last fiscal year was 19,807 in excess in the number reported the year previous, while my predecessor in his last annual message called attention with regret to a decrease in attendance for the year then closed.

## BANKS.

Seventy-six banks of discount and deposit were engaged in active business under the provisions of the banking laws of the State, on the 1st day of October, 1882. On that day their condition was reported as follows:

| | |
|---|---|
| Resources | $122,563,460 |
| Capital | 18,805,700 |
| Surplus and profits | 9,657,702 |
| Due depositors | 82,050,980 |
| Other liabilities | 12,049,078 |

The increase in deposits during the year was $6,333,850; profits, $729,527; loans and discounts, $5,503,379, and the net aggregate increase in assets was $9,099,888.

During the year six new banking associations were organized, one failed, and one was converted from a State to a National Bank.

On the 1st day of July, 1882, the number of savings banks reported to the Superintendent of the Banking Department was 127, of which number eleven are in process of voluntary liquidation. During the year one new savings institution was organized, and one closed, having first paid its depositors and creditors in full. The condition of the savings banks on the day above named was as follows:

| | |
|---|---|
| Resources | $460,123,582 |
| Due depositors | 400,743,838 |
| Surplus | 59,157,039 |
| Other liabilities | 222,705 |
| Number of open accounts | 1,066,518 |

The increase in these several items during the year was as follows:

| | |
|---|---|
| Resources | $35,918,774 |
| Deposits | 30,071,541 |
| Surplus | 5,853,656 |
| Open accounts | 70,776 |

There are fourteen trust, loan and mortgage companies in the State. Their condition on July 1, 1882, was as follows:

| | |
|---|---|
| Resources | $139,758,534 |
| Capital | 12,579,500 |
| Surplus and profits | 9,854,376 |
| Deposits | 104,888,185 |
| Other liabilities | 12,436,473 |

This statement shows an increase over last year of $10,765,848 in deposits, $1,322,027 in surplus and profits, and a net aggregate increase in assets of $13,869,620.

On the first day of October last, there were in the State fourteen corporations for the safe keeping and guaranteeing of personal property, employing $2,676,900 of capital in the aggregate.

State supervision of banks is worse than useless unless it is thorough and effective. Under the law as it now stands, the Superintendent of the Banking Department must cause an examination to be made of these institutions only when, in his opinion, there is good reason to suspect an unsound condition, or false reports. It would seem that the solvency of the banks and the protection of depositors would be better assured, if one or more examinations, in each year, were made compulsory on the Department.*

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* The revised banking law of 1892, chapter 689, required an annual examination of banking corporations and individual bankers, and a biennial examination of savings banks. By L. 1905, chap. 394, amending the banking

## INSURANCE.

The records of the Insurance Department show that there were 151 fire insurance companies doing business in this State on the 1st day of July, 1882, of which sixty-nine were New York State companies, fifty-five were organized in other States, and twenty-seven were foreign companies, with assets amounting in the aggregate to $154,810,890.43; their total liabilities, including capital stock, were $111,423,096.62, and their net surplus, $43,387,793.81.

There were twelve marine insurance companies doing business in this State on the 1st day of January, 1882, with assets amounting to $22,888,423.93, and liabilities, including capital stock and scrip, amounting in the aggregate to $18,183,850.69, leaving a net surplus of $4,704,573.24.

There are twelve life insurance companies organized and doing business under the laws of this State, with assets amounting in the aggregate to $225,966,512.02; liabilities, $187,050,970.48, leaving a surplus as regards policyholders of $38,915,541.54.

There are also seventeen life insurance companies organized in other States, but doing business in this, with total assets of $203,310,947.58, and liabilities amounting to $169,813,325.83, leaving a surplus as regards policyholders of $33,497,621.75; also one foreign life insurance company, with total assets in the United States of $123,735.09, liabilities, $5,248.75, and surplus, $118,486.34. We have six casualty insurance companies, of which two are New York companies, two organized in other States, and two are foreign companies, with aggregate assets amounting to $3,110,737.11; liabilities, $1,948,199.53, and a net surplus of $1,162,537.58.

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law, banks, trust companies and individual bankers were required to be examined twice each year; savings banks once in two years, and other corporations subject to the supervision of the banking department, at least once in each year.

The number of co-operative insurance companies transacting business in this State on the 1st day of January, 1882, was 115, having 325,524 certificates in force, of which 90,219 were written during the year 1881. Within the last-mentioned year 28,274 certificates terminated, and losses to the amount of $4,742,090 were paid by this class of insurance organizations.

During the year 1882, there was organized under the general insurance laws of this State, one mutual fire insurance company, with a paid up cash contribution of $200,000, and one plate glass insurance company, with a paid up capital of $100,000. Eight fire insurance companies, four organized in other States, and four foreign companies, have, during the year, been admitted to transact business in this State, with total assets amounting to $3,220,464.36, and liabilities, including capital stock, amounting to $1,554,788.42. Thirteen fire, two life and two marine insurance companies have ceased to do business in this State during the year 1882.

On the 1st day of July, 1882, the amount of securities, for the protection of policyholders insured by the various insurance companies transacting business in this State, held on deposit in the Insurance Department, as required by law, was $13,594,749.30, classified as follows:

| | |
|---|---|
| New York State life insurance companies.. | $2,852,097.36 |
| New York casualty insurance companies... | 201,509.95 |
| New York fire insurance companies....... | 1,653,000.00 |
| Fire insurance companies of other States.. | 20,100.00 |
| Foreign insurance companies............. | 8,868,041.99 |
| | $13,594,749.30 |

The Superintendent of the Insurance Department has distributed to policyholders, in bankrupt insurance companies, up to July 1, 1882, from the securities held by him for their benefit, the sum of $812,546.55.

I am informed that the expenses of maintaining this department for the year ending September 30, 1882, were at least $100,000, while recent investigations tend to convince the ordinary mind that this department, and the laws in relation to the subject of insurance, do not furnish the protection to the people which they ought. I suggest that steps be taken to make this department more useful and less expensive, and that the law touching the entire question of insurance be reduced to a plain and simple enactment which shall be a safeguard against the abuses to which this important interest is now exposed.

## NATIONAL GUARD.

Under the policy recently inaugurated, the National Guard has been reduced to four divisions, eight brigades, fifteen regiments, one battalion and forty separate companies of infantry, and seven batteries of artillery, comprising in the aggregate 11,608 officers and enlisted men.

The changes made during the year comprise the disbandment of separate companies in Wyoming, Orleans and Madison counties. A separate company in Chautauqua county, the mustering out of which had been included in the orders incident to the general reorganization of the force, has been retained.

On the first day of July last a camp of instruction was established near Peekskill, which was maintained until the fourth day of August. Six regiments were consecutively ordered to this camp, remaining there from five to eight days each. If, as the result of this inaugural encampment seems to indicate, the usefulness of the National Guard can be thereby promoted, with a reasonable expenditure of money, I am of the opinion that a sufficient amount should be appropriated annually to permit at least a part of the force to receive the advantages of this new feature of military instruction.

With the reduction of the number of men enrolled, the efficiency and discipline of the force became a matter of the first importance; and I trust that all legislation on the subject, as well as the administration of the military affairs of the State, will be in that direction.[3]

## STATE PRISONS.

The earnings and expenditures of the several State prisons during the year ending September 30, 1882, are shown by the following table:

### *Auburn.*

| | |
|---|---|
| Earnings | $120,234.16 |
| Expenses | 122,926.43 |
| Deficiency | $2,692.27 |

### *Clinton.*

| | |
|---|---|
| Earnings | $60,361.59 |
| Expenses | 99,606.47 |
| Deficiency | $39,244.88 |

### *Sing Sing.*

| | |
|---|---|
| Earnings | $241,321.93 |
| Expenses | 193,127.20 |
| Surplus | $48,194.73 |

It will be seen from this statement that the total earnings of the three prisons were $6,257.58 in excess of their expenses, and that the large surplus in Sing Sing creates this balance in favor of the State, notwithstanding the deficiency in Auburn and Clinton prisons. But I deem it proper to call attention to the fact that the number of convicts confined at Sing Sing is considerably in excess of the number of cells provided. This necessitates the placing of two convicts in many of the cells, which must be injurious to the morals and health of the prisoners so confined, and dangerous to the discipline of the institution. At the same time Auburn and Clinton prisons have sufficient vacant cells to more than relieve, if occupied, the Sing Sing prison of its surplus of convicts beyond its natural capacity.

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[3] A new Military Code was enacted at this session, 1883, chapter 299, with detailed provisions concerning the enrollment, organization and discipline of the National Guard. [See 1880, note 5, *ante*, p. 428.

On the thirtieth day of last September the number of convicts confined in Sing Sing prison was 1,526, while Auburn contained but 912, and Clinton 499.

If these penal institutions are self-sustaining, without injury or embarrassment to honest labor, it is a matter for congratulation; but it is, at least, very questionable whether the State should go further and seek to realize a profit from its convict labor. In my judgment it should not, especially if the danger of competition between convicts and those who honestly toil, is thereby increased, and the over-crowding of any of the prisons, with its attendant evils, is the result.[4]

The asylum for insane convicts at Auburn contained, on the 30th day of September, 1882, one hundred and forty-one inmates, of which nine were women.

## CHARITABLE INSTITUTIONS.

The following information is furnished by the State Board of Charities, who will, at an early day, present their report to the Legislature in detail.

The value of the property held by the various charitable institutions on the 30th day of September, 1882, was $41,103,809.54, of which $33,501,605.36 was real estate, and $7,602,304.18 is personal property.

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[4] By chapter 468, approved May 25, a proposition to abolish contract labor in State prisons was submitted to the people at the general election in 1883, and was approved.

The receipts of all these institutions during the last fiscal year were $10,186,810.91, derived from the following sources:

| | |
|---|---|
| State of New York | $719,302.40 |
| Cities and counties | 4,236,130.00 |
| Paying inmates | 371,017.13 |
| Invested funds | 397,074.90 |
| Donations | 1,283,876.59 |
| Loans | 355,043.00 |
| Labor of inmates | 63,747.05 |
| All other sources | 2,760,620.84 |
| | $10,186,810.91 |

The expenditures during the same period were as follows:

| | |
|---|---|
| State institutions | $1,482,819.84 |
| County and city institutions | 2,340,806.55 |
| Incorporated benevolent institutions | 5,891,439.23 |
| | $9,715,065.62 |

| | | |
|---|---|---|
| The number of State paupers in the various institutions September 30, 1881, was | | 164 |
| Committed during the year ending September 30, 1882 | | 1,392 |
| | | 1,556 |
| During the same period the number of deaths was | 43 | |
| Discharged | 1,350 | |
| | | 1,393 |
| Under care October 1, 1882 | | 163 |

Of the number reported as discharged, 778 were furnished transportation to their homes in other States and countries, or to their places of legal settlement.

During the year the board has returned to various countries of Europe, forty-eight lunatic, idiotic, crippled, blind and otherwise disabled alien paupers, who had been deliberately shipped to our shores by the authorities of foreign cities and towns, or by relatives, guardians and friends, in order to shift the burden of their support to our public charities. It is to be hoped that the continued return of such unfortunates to those who should legally and naturally provide for them will in time discourage such mean and disgraceful attempts to evade a plain and humane duty.

The number of insane in the various institutions on the 30th day of September, 1882, was 10,443, distributed as follows:

| | |
|---|---:|
| In State institutions | 3,105 |
| In county poor-houses and asylums | 1,955 |
| In city alms-houses and city asylums | 4,739 |
| In private asylums | 503 |
| In the Asylum for Insane Convicts at Auburn | 141 |
| | 10,443 |

Of the insane in the State institutions, 2,022 were confined in the Willard and Binghamton asylums, they being entirely of the chronic class.

The number of insane persons in the several institutions, as given above, is 384 in excess of those reported at the close of the previous year, and thus the constant increase of insanity in our State is further demonstrated. The problem of the custody, care and treatment of this pitiable class is, therefore, crowded more and more upon the attention of all thinking citizens and those who make their laws. I am satisfied that existing statutes on this subject need amendment. The results of recent investigations ordered by the Legislature, and the report of the Board of Charities, will doubtless contain valuable suggestions on this subject.

If, as seems to be generally conceded, insanity is a disease needing special and peculiar treatment, it must be that the chance of improvement in those affected by this malady would be greatly increased if they could have the care afforded by an institution especially established for its treatment.

The usefulness of such institutions depends very much on the confidence which the public have in their proper conduct, and it is abundantly demonstrated that the people are ready to believe, sometimes on very slight grounds, the gravest charges of mismanagement and inhuman treatment with reference to their superintendence. It is equally certain that if abuses in the care of the insane exist, there should be the least possible opportunity for their continuance without exposure. Frequent visitations and the most thorough examination should be made either by local boards or by properly constituted State authorities, which the people would be sure were in nowise committed, except to the faithful discharge of their duties. By this means these institutions would be protected from unjust charges and suspicion, and the confidence of our citizens in their management be secured.

A dispute has arisen between the Board of Charities and the managers of some of the insane asylums in regard to their respective rights and duties, which should be settled by plain statutory provisions.

## IMMIGRATION.

The number of immigrants landed at Castle Garden from January first, 1882, to December first, 1882, was 435,647, being an increase of 18,566 over the same period of the preceding year. The Commissioners of Emigration estimated that the number arriving during the month of December would make the total for the year 460,000 being the largest number landed in any year since the creation of the Commission in 1847.

Of the appropriation of $200,000 made by the last Legislature for the maintenance of the Commission, $47,569.46 have been expended in protecting the immigrants while landing, directing and forwarding those who had destinations fixed upon, assisting such as sought employment, and caring for the sick and helpless, and $23,473.24 for special repairs to buildings.

Under an act of Congress, passed in August last, the sum of fifty cents for each alien passenger intending to remain in this country is now collected by the United States Treasury Department, and credited to the Emigration Commission. The sum collected for the first three full months since the law went into operation was $8,000 less than the expenditure for that period; and since during the ensuing winter months immigration will decrease, the deficiency is likely to be increased to such an extent as to require the expenditure during the coming year of the amount now remaining to the credit of the board in the hands of the State Treasurer. Judging from the result thus far apparent, it is not likely, in the opinion of the Commissioners, that the collections by the Federal Government will be sufficient to meet the expense of this work, and further appropriations will be necessary, unless some economies can be effected in the system of the State supervision.[5]

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[5] "An act to amend the laws relating to alien emigration, and to secure an improved administration of alien emigration," chapter 286, was passed on the 21st of April. It provided for the appointment by the Governor of a Commissioner of Emigration, who was to hold office five years. The president of the German Society of the City of New York, and the President of the Irish Emigrant Society were made *ex-officio* commissioners, and they, with the commissioner appointed by the Governor, were to constitute a Board of Immigration. The act contained details relative to the administration of the department.

## QUARANTINE AND HEALTH OFFICER.

The quarantine establishment in the port of New York has been conducted in much the usual manner during the past year, and no contagious disease has been allowed to enter the State through the channels of immigration or commerce. It appears that the amount paid from the State Treasury for the maintenance of this department for the year ending September 30, 1882, including the salaries of three Quarantine Commissioners, was $35,500.

From a report of a special committee appointed by the Senate in 1881, it appears that while the emoluments of the Health Officer of the Port of New York were very difficult of exact ascertainment, the committee came to the conclusion that the net income of that officer did not average less than $40,000 per annum, and might, in favorable years, reach a sum upwards of $60,000. No one can read this report without being convinced that this estimate is a very moderate one, and represents a sum of money derived from the commerce of our principal port in startling disproportion to services rendered, and greater than any man ought to receive for official service.

If the fees and charges are so high that the commerce of the port is injuriously affected by their collection, they should be reduced; if they are to be continued, all but a reasonable sum for the salary of the Health Officer should be applied, if legally possible, to the support of the quarantine establishment; and if this cannot be done, they should

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On the 27th of April Governor Cleveland nominated William H. Murtha of Brooklyn to be Commissioner of Immigration under this act. On the 4th of May, the last day of the session, the Governor sent a communication to the Senate relative to this appointment [see special message of May 4], but the nomination was not confirmed.

Chapter 517, approved June 2, appropriated, for use by the Board of Emigration, an unexpended balance of an appropriation of $200,000 made by the act of 1882, chapter 385, but the amount so reappropriated was not to be used except in case of a deficiency of receipts from the United States under the recent act of Congress.

be so limited as to yield to the officer a fair salary only, thus relieving our commerce to that extent.

And here it is deemed proper to call the attention of the Legislature to the subject of Harbor Masters. The law now in force provides for the appointment of these officers, and a Captain of the port of New York. Their duties are generally to provide and assign suitable accommodations for all ships and vessels, to regulate them at the stations they shall occupy at the wharves, and to exercise other control, of a kindred character, over shipping.

As compensation for the performance of their duties, they are by the statute under which their appointment is authorized, permitted to collect certain fees to be paid by the masters, owners or consignees of vessels entering the port.

In October, 1876, the Supreme Court of the United States adjudged that the provision of our statute permitting the collection of those fees, was unconstitutional and void, and yet their exaction has been continued by these officers appointed by the State, and having no other means of compensation. The money thus collected is called by the captain of the port "voluntary payments by the interest served."[*]

The great State of New York should no longer rest under the accusation that it knowingly permits officials of its own creation to burden the commerce entering its port, by the exaction of charges which the highest tribunal in the land has determined to be illegal.

It is worthy of the consideration of the Legislature whether the duties attached to these offices could not properly be performed under the auspices of the department of docks in the city of New York. If, however, it is determined that the office of harbor master is necessary, some way should be devised by which he can be legally compensated for his services.

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[*] See Inman SS. Co. v. Tinker (1876), 94 U. S. 238.

The subject of Port Wardens and the system of pilotage connected with the port of New York are also commended to the consideration of the Legislature as matters which need further regulation by well digested laws.

A reference is hardly necessary to the fact that if we are to maintain the supremacy of our port against a constantly increasing competition, there should be no unfavorable contrast in regard to fees and charges, which are indirectly a tax on its commerce.[7]

## THE NEW CAPITOL.

The total cost of the New Capitol to date, including a balance of about $150,000 remaining to meet the expense of the work now in progress, is $14,222,993.09. The two legislative chambers and offices for the most of the State officers have been completed. The offices still to be provided for in the new building are the Comptroller, State Treasurer, State Engineer and Surveyor, Superintendent of the Bank Department, Canal Appraisers, State Board of Charities, the State Library and the Court of Appeals.

The $1,400,000 expended during the last year have been applied to the completion of the east front and roof; the erection of outer walls of the west front; the construction of a room for the Court of Appeals, which will be ready for use about the first day of March; the carrying up of the main tower to the roof line of the main walls, and the completion of some of the department offices, which were unfinished at the beginning of the year.

The entire outer walls are now substantially completed and the contract for the roofing yet undone has been awarded.

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[7] Chapter 357, passed May 4, provided for the appointment of a captain of the port of New York, and eleven harbor masters. The act prescribed the powers and duties of these officers, and fixed their salaries. They were prohibited from receiving fees. The act of 1862, chapter 487, on the same subject, was repealed.

The Commissioners estimate that a million or a million and a quarter dollars, at most, is all that can be expended economically during the coming year.

A Commission was appointed during the past year by my predecessor, pursuant to chapter 295 of the Laws of 1882, to survey and examine the different parts of the building as to the safety and durability of the work, more especially the Assembly Chamber and its ceiling. In their report, which was made in September last, they express doubt as to the stability of the vaulted ceiling of the Assembly Chamber, and recommend that most of the stone vaulting be removed, and its place supplied with a construction of wood.

This report has provoked a reply from the architects of the building, in which they insist that in its present state, and without repairs, there is nothing in the condition of the ceiling of the Assembly Chamber to warrant apprehension in regard to its safety, or to prevent its immediate occupation.

It must be regarded, at least, as very unfortunate that this question should arise before the completion of this building, and notwithstanding the fact that the expense of its construction thus far has been the cause of so much complaint.

If there remains a question as to its safety in any part, it should be put at rest before proceeding further. If there is no such question, the building should be finished as quickly as practicable, and the delays, errors and expense attending its construction, if possible, forgotten.[8]

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[8] Chapter 9, passed February 3, 1883, appropriated $250,000 for work on the New Capitol, to be used so far as needed in completing the rooms assigned to the State Library and the Court of Appeals.

Chapter 320, passed April 26, appropriated $1,000.000 for continuing work on the New Capitol.

Chapter 146, passed March 30, created the office of Commissioner of the New Capitol, who was to have charge of the " work of constructing, building

## JUDICIAL AMENDMENT.

At the last election the people adopted an amendment to the Constitution, by the terms of which the Legislature has the power to organize an additional General Term of the Supreme Court, and to provide for the election by the electors of the respective judicial districts, of not more than two additional justices of that court in the first, fifth, seventh and eighth, and not more than one such justice in the second, third, fourth and sixth judicial districts.[e] In the performance of the duty imposed by this amendment, extraordinary care should be exercised in order that the enormous expense which the people are already called upon to meet in the support of the various branches of the judiciary of the State, shall not be increased beyond the amount necessary to relieve such of the courts as are plainly overburdened.[9]

## APPORTIONMENT.

The last Legislature neglected its plain duty in failing to reapportion the State into congressional districts, according to the United States census of 1880, and pursuant

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and finishing the New Capitol, removing the Old Capitol and State Library buildings, and completing the arrangements of the approaches and Capitol grounds."

The same act authorized the Governor to appoint on inspector of Capitol work who was to examine the work and report to the Governor.

By L. 1899, chapter 566, the name of the office of Capitol Commissioner was changed to that of State Architect.

Chapter 349, passed May 2, 1883, constituted the Governor, Lieutenant-Governor and Speaker of the Assembly trustees of public buildings, and they were given charge of all State buildings in the city of Albany. The trustees were authorized to appoint a Superintendent of Public Buildings. The act prescribed the general powers and duties of the Superintendent.

[e] Const. 1846, art. 6, am. 1869, § 28, added 1882.

[9] Chapter 329, passed April 27, provided for the organization of five general terms of the Supreme Court, and for the election of two additional justices of that court in each of the first, fifth, seventh and eighth judicial districts, and one each in the second, third, fourth and sixth districts.

to the allotment by Congress of our quota of members of the House of Representatives. It is to be hoped that this work will be speedily undertaken. To make an apportionment of the population of the State into thirty-four districts, having due regard to geographical situation and contiguity of territory, requires but little time and no great amount of ingenuity if attempted with fair and honest intentions.[10]

## REFORM IN CIVIL SERVICE.

It is submitted that the appointment of subordinates in the several State departments, and their tenure of office or employment should be based upon fitness and efficiency, and that this principle should be embodied in legislative enactment, to the end that the policy of the State may conform to the reasonable public demand on that subject.[11]

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[10] Chapter 424, approved May 16, divided the State into 34 congressional districts.

[11] An act to regulate and improve the civil service of the State, chapter 354, was passed May 4. It authorized the Governor to appoint a State Civil Service Commission to be composed of three members not more than two of whom should be adherents of the same political party.

Provisions regulating appointments and promotions in the civil service were included in the Constitution of 1894, article 5, section 9. The civil service law was revised by chapter 370, L. 1899.

Political assessments were prohibited by the Civil Service law of 1883, chapter 354, and also by chapter 422.

The act of 1883, chapter 354, amended 1884, chapter 410, was sustained in Rogers v. Buffalo (1890), 123 N. Y. 173; Chittenden v. Wurster (1897), 152 N. Y. 345. In People ex rel. Killeen v. Angle (1888), 109 N. Y. 564, the act was held inoperative as to the department of public works (art. 5, § 3).

The act of 1899, chapter 370, sections 20, 21, was sustained as to veterans in Stutzbach v. Coler (1901), 168 N. Y. 416. See also Seeley v. Stevens (1907), 190 N. Y. 158. The provision in section 13 regulating the method of making selections for appointment was held unconstitutional in People ex rel. Balcom v. Mosher (1900), 163 N. Y. 32.

## MUNICIPAL GOVERNMENT.

The formation and administration of the government of cities are subjects of much public interest, and of great importance to many of the inhabitants of the State. The formation of such governments is properly matter for most careful legislation.

They should be so organized as to be simple in their details and to cast upon the people affected thereby, the full responsibility of their administration. The different departments should be in such accord as in their operation to lead toward the same results. Divided counsels and divided responsibility to the people, on the part of municipal officers, it is believed, give rise to much that is objectionable in the government of cities. If, to remedy this evil, the chief executive should be made answerable to the people for the proper conduct of the city's affairs, it is quite clear that his power in the selection of those who manage its different departments should be greatly enlarged.

## PRIMARY ELECTIONS.

The protection of the people in their primaries will, it is hoped, be secured by the early passage of a law for that purpose, which will rid the present system of the evils which surround it, tending to defraud the people of rights closely connected with their privileges as citizens.[12]

## SPECIAL LEGISLATION.

It is confidently expected that those who represent the people in the present Legislature will address themselves to the enactment of such laws as are for the benefit of all the citizens of the State, to the exclusion of special legislation and interference with affairs which should be managed by the localities to which they pertain.

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[12] Chapter 380, approved May 11, repealed sections 8 and 9 of the primary election law of 1882, chapter 154. These sections related to the territorial application of the act.

It is not only the right of the people to administer their local government, but it should be made their duty to do so. Any departure from this doctrine is an abandonment of the principles upon which our institutions are founded, and a concession of the infirmity and partial failure of the theory of a representative form of government.

If the aid of the Legislature is invoked to further projects which should be subject to local control and management, suspicion should be at once aroused, and the interference sought should be promptly and sternly refused.

If local rule is in any instance bad, weak or inefficient, those who suffer from mal-administration have the remedy within their own control. If, through their neglect or inattention, it falls into unworthy hands, or if bad methods and practices gain a place in its administration, it is neither harsh nor unjust to remit those who are responsible for those conditions to their self-invited fate, until their interest, if no better motive, prompts them to an earnest and active discharge of the duties of good citizenship.

## CONCLUSION.

Let us enter upon the discharge of our duties, fully appreciating our relations to the people, and determined to serve them faithfully and well. This involves a jealous watch of the public funds, and a refusal to sanction their appropriation except for public needs. To this end all unnecessary offices should be abolished, and all employment of doubtful benefit discontinued. If to this we add the enactment of such wise and well considered laws as will meet the varied wants of our fellow citizens and increase their prosperity, we shall merit and receive the approval of those whose representatives we are, and with the consciousness of duty well performed, shall leave our impress for good on the legislation of the State.

GROVER CLEVELAND.

## SPECIAL MESSAGES.

January 26. To the Senate:

**Veto of a bill entitled "An act authorizing the Board of Supervisors of the County of Montgomery to borrow money on the credit of said county, and to provide for the payment thereof."**

"This bill authorizes the issue of bonds by the Board of Supervisors of Montgomery county, amounting to $97,458.64, which shall bear interest at the rate of five per cent. per annum, and be made payable on the first day of March, 1884.

It is claimed that by the failure of the assessors in several of the towns in the county mentioned to properly verify the assessment rolls returned to the Board of Supervisors in the year 1882, it is impossible to legally levy and collect the taxes necessary to meet the audits and appropriations made at the last meeting of the board, and that the issue of the bonds authorized by the bill is necessary in order to provide funds to pay such audits and appropriations.

By the terms of the bill a tax is to be levied on the taxable property in the county, and collected and paid in the year 1883, for the purpose of raising money to pay the bonds and the interest thereon.

This involves the levying and collection of this tax with the usual annual tax of that year. By this means a double tax will be levied and collected at the same time, and an indebtedness which should be assessed upon the property in the county at its valuation when the tax should have been levied, will be charged upon property the valuation of which may be very much changed, and which may be held by other parties. And it may well be, that property will be burdened to pay a share of the current expenses of the county, which were incurred before such property had any taxable existence within said county.

This is manifestly unfair, and would probably give rise to legal complications.

The defects in the verification of the assessment rolls which it is supposed make the passage of this bill necessary, are so gross and palpable in the light of the statute on the subject, that they should have been early discovered and remedied. It is not unlikely that the correction of these errors was neglected with the expectation of seeking legislative aid as the easiest way out of the difficulty.

This practice should be discouraged, and mistakes of this description should be corrected if possible where they originated. In this case, if the interference of the Legislature is indispensable, it should, I think, be invoked to authorize the immediate levy of a tax to raise the money required to pay this indebtednes of the county, based upon the value of property at the time when the usual assessment rolls for the year 1882 should have been made.

This would provide a plan less subject to legal question than that embodied in the bill under consideration, and which it is believed would be accompanied with less expense to the taxpayers than the interest on the bonds proposed to be issued.''

The bill was not passed over the veto.

January 26. To the Assembly: Transmitting the annual report of the trustees of the Cooper Union.

February 5. To the Assembly:

**Veto of a bill entitled "An act authorizing and requiring the annual town meeting for the town of Hector, in the county of Schuyler, for the year one thousand eight hundred and eighty-three, to be held on the first Tuesday in April next."**

'' This legislation seems to be prohibited by the provision of the Constitution which declares that the Legislature shall not pass a private or local bill providing for the election of members of boards of supervisors.[d] And if it is not thus prohibited, there seems to be no sufficient reason why the town meeting referred to in the bill should be postponed. It is alleged that the prevalence of a contagious disease in the town mentioned renders such a postponement proper; but upon inquiry I am convinced that there will be a fair expression of the choice of the electors if the town meeting is held at the usual time."

The bill was not passed over the veto.

February 5. To the Assembly:

**Veto of a bill entitled "An act to amend chapter three hundred and seventy of the laws of eighteen hundred and seventy-five, entitled 'An act to amend and consolidate the several acts relating to the city of Elmira.'"**

"This bill provides, among other things, that the city of Elmira shall not be liable for damages or injury sustained by any person in consequence of any street, highway, bridge, culvert, sidewalk or cross-walk in said city being out of repair, unsafe, dangerous or in any manner obstructed, unless actual notice in writing of such condition be given to the common council, the mayor or the city clerk, at least forty-eight hours previous to such damage or injury. It is also provided that all claims (which was probably intended for claimants) against the city for damages or injury alleged to have arisen from such defective, unsafe or dangerous condition, or from the negligence of the city authorities in respect to any such street, highway, bridge, culvert, sidewalk or cross-walk shall, within fifteen days after the happening of such damage or injury, notify the mayor or city attorney in writing, signed by the claimant and duly verified, describing the time, location of the place where such injury occurred, cause and extent of the damage or injury, and that the failure to so present such claim shall be a bar to any action or proceedings therefor against the city. The time for commencing an action for such damage or injury is limited to six months from the happening of the same.

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[d] Const. 1846, art. 3, § 18, added 1874.

These provisions establish a different rule to govern the liability of the city of Elmira in cases of injury caused by negligence, than that which prevails in other parts of the State.

I regard this as special legislation of the most objectionable character.

Besides being wrong in principle, the practical operation of such an enactment cannot fail, it seems to me, to produce injustice and jeopardize personal rights. Under the provisions of this bill the municipality is absolved from the consequences of the grossest negligence of its agents and servants resulting in the most serious injury to the citizen, unless actual notice of the negligent acts or omissions be given. No person would be likely to serve such notice in anticipation of being himself injured by reason of the conditions specified in the bill; and if he did, he would by that very act furnish such proof of his knowledge of the existence of danger, and his opportunity to avoid it, as might defeat his claim for redress. And certainly a cause of action against the city for injuries sustained through negligence ought not to depend upon anything which a stranger to the controversy may have done or omitted.

I am also unwilling to sanction such an invitation to relax the duty of municipal authorities to properly care for the duty of the citizen.

The provisions of the bill requiring the presentation of a claim for damages within fifteen days, and the commencement of an action within six months after the happening of the injury, are obviously objectionable, as unnecessarily and unreasonably restricting the right of the party injured, to recover by a resort to the courts the damages which he has sustained."

The bill was not passed over the veto.

February 9. To the Assembly:

**Veto of a bill entitled "An act to incorporate the Darwin R. Barker Library Association of Fredonia, New York."**

"We have general statutes regulating the organization of precisely such associations as this bill contemplates, and the creation of corporations of this description by special act, except when, in the judgment of the Legislature, its object cannot be attained under general laws, is distinctly prohibited by article eight of the Constitution.[e]

There certainly appears to be no necessity for the passage of a special act in this particular case to effectuate all the purposes which the proposed corporation should be created to accomplish.

If the special enactment is sought in order to exempt this corporation from the payment of local taxes, as is provided by the eighth section of the bill, it should, in my opinion, be refused, because if not prohibited by the clause in the Constitution forbidding the Legislature from passing a private or local bill granting to a private corporation or association any exclusive privilege or immunity,[f] no sufficient reason is apparent for the exemption of the property of this corporation from such taxation, as is borne by others of its class."

The bill was not passed over the veto.

February 12. To the Assembly:

**Veto of a bill entitled "An act authorizing the Board of Supervisors of Chautauqua county to appropriate money for the purchase of land upon which to erect a soldiers and sailors' monument."**

"It is not an agreeable duty to refuse to give sanction to the appropriation of money for such a worthy and patriotic object; but I cannot forget that the money proposed to be appropriated is public money to be raised by taxation, and that all that justifies its exaction from the people, is the necessity of its use for purposes connected with the safety and substantial welfare of the taxpayers.

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[e] Const. 1846, art. 8, § 1.

[f] Const. 1846, art. 3, § 18, added 1874.

The application of this principle furnishes, I think, a sufficient reason why this bill should not be approved.

I am of the opinion, too, that the appropriation of this money by the Board of Supervisors would constitute the incurring of an indebtedness by the county to be thereafter met by taxation. If this be true, the proposed legislation is forbidden by section eleven of article eight of the Constitution, which provides that no county, city, town or village shall be allowed to incur any indebtedness except for county, city, town or village purposes.

Before this prohibition became a part of the Constitution, a statute was passed permitting monuments to be erected to fallen soldiers at the expense of the inhabitants of the county within which they were located; but the expenditure of money raised by taxation for such a purpose was only allowed when especially sanctioned by the vote of a majority of all the electors of the county. In the bill under consideration the taxpayers are not permitted to be heard on the subject.

It is thus evident that the legislation proposed guards less the rights and interests of the people than the statute passed before the Constitutional amendment prohibited all enactments of this description.

I may perhaps be permitted to express the hope that a due regard to fundamental principles and a strict adherence to the letter and spirit of the Constitution, which furnish the limit as well as the guide to legislation, will prevent the passage of bills of this nature in the future.''

The bill was not passed over the veto. In Parsons v. Van Wyck (1900), 56 App. Div. 329, the court sustained the act of 1893, chapter 522, which provided for a memorial arch or monument in Riverside Park, New York, holding that it was a city purpose within the meaning of the Constitution. The court cited Tompkins v. Hodgson (1874), 2 Hun, 146.

February 19. To the Assembly:

**Veto of a bill entitled "An act to authorize the towns of Philadelphia, Theresa and Alexandria, in Jefferson county, and the towns of Hammond and Morristown, in St. Lawrence county, to raise moneys to relieve their railroad stocks from existing liens and burdens."[13]**

"This bill has evidently been drawn with a view of avoiding any constitutional objection on its face; but an explanation of its real purposes has led me to the conclusion that it ought not to become a law.

Certain stock of the Black River and Morristown Railroad Company is held by or on behalf of the towns named in the bill, but this stock is in no manner pledged, mortgaged or hypothecated, and is subject to no actual lien or charge.

The design is, as I am informed by the friends of the bill, to use the money which under its provisions is to be raised by tax to pay certain indebtedness of the said railroad company, in the expectation that thereby a consolidation of its road with the Utica and Black River Railroad may be affected. By this means it is hoped that the stock in the Black River and Morristown Railroad Company, to which the towns mentioned have subscribed, may be made more valuable.

I am of the opinion that the bill, if approved, would not justify such an expenditure of the money proposed to be raised.

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[13] This bill was not passed over the veto, but another bill on the same subject was passed, and became a law, chapter 35, on the 20th of February. The act authorized the towns named, Philadelphia, Theresa, Alexandria, Hamlin and Morristown to consolidate the Black River and Morristown Railroad Company with the Utica and Black River Railroad Company, or some other company.

In this view, the legislation sought would be of no avail. If the bill does permit such an application of public funds, it seems to be in direct contravention of the Constitution, which provides that no town shall give any money or property, or loan its money or credit, to or in aid of any individual, association or corporation."

The bill was not passed over the veto.

February 20. To the Assembly: Transmitting the annual report of the commissioners of quarantine, with accompanying report of the Health Officer of the port of New York, for the year 1882.

February 21. To the Senate:

**Veto of a bill entitled "An act to authorize the trustees of the village of Fayetteville to purchase a steam fire-engine and apparatus for the use of the fire department of said village, and to borrow money on the credit of said village for such purpose."**

" By reference to section 21 of chapter 482 of the laws of 1875, it will be seen that the authority is vested in the boards of supervisors to authorize villages in the several counties to do precisely the things mentioned in this bill. The act referred to was passed, as its title declares, " to confer upon boards of supervisors further powers of local legislation and administration," and with the intent that the matters therein specified, being of local interest and importance, should be disposed of by an authority nearer home than the Legislature of the State.

This intent accords with the letter and spirit of the Constitution,[g] and with sound political principle.

With a statute so plain, and containing requirements so easy of fulfillment, I can hardly understand why so many bills of the kind under consideration should be introduced and passed.

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[g] Const. 1846, art. 3, §§ 22, 23, am. 1874.

The members of the boards of supervisors should not be allowed to shift the responsibility of increasing the taxes of their constituents to the Legislature of the State. They should know whether unusual expenditures are necessary in their localities, and should be made answerable to their neighbors, for the economical and proper discharge of their duties as local legislators. If this were insisted upon, perhaps fewer schemes involving increased taxation would be inaugurated.

In this particular case I have before me the remonstrance of many of the best citizens of the locality against the passage of this bill.''

The bill was not passed over the veto.

February 21. To the Senate:

**Veto of a bill entitled "An act to authorize the president and trustees of the village of Mechanicville to issue the bonds of said village for the purchase of a steam fire engine and hose, and to provide for the payment of such bonds."**

'' The objections to this bill are the same as those made to Senate bill No. 113, authorizing the village of Fayetteville to raise money for a like purpose.

The Board of Supervisors of the county of Saratoga has ample power to permit the people of the village of Mechanicville to increase their taxation for the purposes mentioned in this bill. If they desire to do so, application should be made to such board, pursuant to section 26 of chapter 482 of the laws of 1875.''

The bill was not passed over the veto.

March 2. To the Assembly:

**Veto of a bill entitled "An act to authorize the State Board of Audit to hear and determine the claim of Edward M. Moore."**

'' I am unable to see what good purpose this bill answers. The law by which the Board of Audit is created provides that it shall be the duty of said board and it shall have power to hear all private claims and accounts against the State, with certain exceptions, and 'to determine on the justice and amount thereof, and to allow such sums as it shall consider should equitably be paid by the State to the claimants.'

The bill under consideration authorizes Edward M. Moore to present a claim to the board, which is a right he now has.

It further provides that 'the State Board of Audit is hereby authorized to hear and audit said claim, and to award such compensation for said services as shall appear to be just and reasonable.'

If this means that the Board of Audit shall merely fix the amount of compensation, the Legislature has, by this law, audited and allowed this claim to the extent of determining that something is due to the claimant; but the Legislature is prohibited from auditing or allowing any private claim or account against the State, by the Constitution.[h]

If this is not the effect of the bill, I cannot see how the claimant's standing in the Board of Audit will be improved by its provisions."

The bill was not passed over the veto.

March 2. To the Assembly:

**Veto of a bill entitled "An act to regulate the fare to be charged and collected by persons or corporations operating elevated railroads in the city of New York."**

"This bill prohibits the collection or receipt of more than five cents fare on any elevated railroad in the city of New York, for any distance between the Battery and Harlem river, and provides that if any person or corporation operating such elevated railroads shall charge, demand, collect or receive any higher rate of fare, such person or corporation shall, in addition to all other penalties imposed by law, forfeit and pay to any person aggrieved fifty dollars for each offense, to be recovered by such person in any court of competent jurisdiction.

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[h] Const. 1846, art. 3, § 19, added 1874.

The importance of this measure and the interest which it has excited, has impressed me with my responsibility, and led me to examine, with as much care as has been possible, the considerations involved.

I am convinced that in all cases the share which falls upon the Executive regarding the legislation of the State should be in no manner evaded, but fairly met by the expression of his carefully guarded and unbiased judgment. In his conclusion he may err, but if he has fairly and honestly acted, he has performed his duty and given to the people of the State his best endeavor.

The elevated railroads in the city of New York are now operated by the Manhattan Railway Company, as the lessee of the New York Elevated Railway Company and the Metropolitan Elevated Railway Company.

Of course whatever rights the lessee companies have in relation to the running and operation of their respective roads passed to the Manhattan Company under its lease.

The New York Elevated Railway Company is the successor of the West Side and Yonkers Patent Railway Company.

The latter company was formed under and in pursuance of an act passed on the 20th day of April, 1866.

The third section of that act provides that companies formed under its provisions 'may fix and collect rates of fare on their respective roads, not exceeding five cents for each mile or any fraction of a mile for each passenger, and with right to a minimum fare of ten cents.'

On the 22d day of April, 1867, an act was passed in relation to this corporation, which provides for the manner of constructing its road, the eighth section of which act reads as follows:

'The said company shall be authorized to demand and receive from each passenger within the limits of the city of New York rates of fare not exceeding, for any distance less than two miles, five cents; for every mile or fractional part of a mile in addition thereto, one cent. Provided that when said railway is completed and in operation between Battery Place and the vicinity of Harlem river, the said company may, at its option, adopt a uniform rate not exceeding ten cents for all distances upon Manhattan Island, and may also collect said last named rate for a period of five years from and after the passage of this act.'

It was further provided by section nine of this act that the said company should pay a sum not exceeding five per cent. of the net income of said railway from passenger traffic upon Manhattan Island, into the treasury of the city of New York, in such manner as the Legislature might thereafter direct, as a compensation for the use of the streets of the city.

In 1868 a law was passed supplementary to the act last referred to, by which the said company was authorized to adopt such form of motor as certain commissioners should, after due experiment, recommend or approve.

Specific provision was made in the act to carry out section 9 of the law of 1867, in relation to the payment of the five per cent. of the net income of the company into the treasury of the city.

Section 3 of this act contains the following provision:

'It shall be the duty of the constructing company aforesaid, before opening its railway to public use, to file with the Comptroller of the city of New York, in form to be approved by the mayor of the city of New York, its bond in the penal sum of $100,000, conditioned upon the true and faithful payment of the revenue in amount and manner specified in the preceding section, and the payment thereof shall be the legal compensation in full for the use and occupancy of the streets by said railway as provided by law, and shall constitute an agreement in the nature of a contract between said city and Constructing Company entitling the latter or its successors to the privileges and rates of fare heretofore or herein legalized, which shall not be changed without the mutual consent of the parties thereto as aforesaid; and the mayor, on behalf of said city may, in case of default in payments as aforesaid, sue for and collect at law any arrearages in such payment, and the claims of the city therefor shall constitute a lien on the railway of said company, having priority over all others.'

The use of what are called dummy engines was afterwards authorized in the operation of said road by the commissioners above referred to.

The New York Elevated Railroad Company was organized under the general railroad law passed in 1850, and the laws amendatory thereof and supplementary thereto.

Within a short time thereafter the last named company became the purchaser under a foreclosure, and by other transfers of the railway and all the rights, privileges, easements and franchises of the West Side and Yonkers Patent Railway Company (the name of which had in the meantime been changed to the West Side Elevated Patented Railway Company of New York city).

We have now reached a point where the New York Elevated Railway Company, one of the lessors of the Manhattan Railroad Company, has succeeded to all the rights and property of the West Side and Yonkers Patent Railway Company.

By a law passed on the 17th day of June, 1875 (the railway still being unfinished), it is declared that the New York Elevated Railroad Company having acquired by purchase under mortgage foreclosure and sale and other transfer, all the rights, powers, privileges and franchises, which were conferred upon the West Side and Yonkers Patent Railway Company by the acts above referred to, is 'hereby confirmed in the possession and enjoyments of the said rights, powers, privileges and franchises as fully and at large as they were so granted in and by the acts aforesaid to the said West Side and Yonkers Patent Railway Company.'

The Court of Appeals, speaking of this law, uses the following language:

'The effect of this act was to secure to the Elevated Railroad Company all the rights, privileges and franchises of the West Side and Yonkers Patent Railway Company under the purchase by and transfer to it.'[1]

By the sixth section of this act, it is provided that the New York Elevated Railroad Company might demand and receive from each passenger on its railroad, not exceeding ten cents for any distance of five miles or less, and with the assent required by section 3 of the act of 1868, hereinbefore referred to, not exceeding two cents for each additional mile or fractional part thereof.

Another act was passed in 1875, commonly called the Rapid Transit Act, which provided for the appointment of commissioners, who, among other things, were authorized to fix and determine the time within which roads subject to the provisions of the act should be completed, together with the maximum rates to be paid for transportation and conveyance over said railways, and the hours during which special cars should be run at reduced rates of fare.

Commissioners were duly appointed by the mayor of the city of New York, as provided by this act, who fixed and determined the route of the road of the New York Elevated Railroad Company, and prescribed with the utmost particularity the manner of its construction, and thereupon deliberately agreed with said company that it should charge as fare upon trains and cars other than what were called by the parties commission trains and cars, for all distances under five miles not to exceed ten cents, and not to exceed two cents for each mile or fraction of a mile over five miles, until the fare should amount to not exceeding fifteen cents for a through passenger from and between the Battery and intersection of Third avenue and One Hundred and Twenty-ninth street, and from and between the Battery and High Bridge not to exceed seventeen cents for a through passenger, and that for the entire distance from and between the Battery and Fifty-ninth street the fare should not exceed ten cents per passenger.

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[1] Re New York Elev. R. Co. (1877), 70 N. Y. 327.

It was further agreed between the said company and the commissioners that commission trains should be run during certain hours in the morning and evening for the accommodation of the public and the laboring classes, upon which the fare should not exceed five cents from and between the Battery and Fifty-ninth street, nor any greater sum for any distance not exceeding five miles; that it should not exceed seven cents for a through passenger from and between the Battery, or any point south thereof, and the Harlem river, and that such fare should not exceed eight cents on such commission cars and trains from and between the Battery and High Bridge.

And it was further agreed by said company that when the net income of the road, after all expenditures, taxes and charges are paid, should amount to a sum sufficient to pay exceeding ten per cent. per annum on the capital stock of the company, that in such case and within six months thereafter, and so long as said net earnings amount to a sum sufficient to pay more than ten per cent. as aforesaid, the said company would run commission trains on its road at all hours during which it should be operated, at the rates of fare last mentioned.

Having thus completed an agreement with this company, the commissioners transmitted the same to the mayor of the city of New York, accompanied by a very congratulatory report of their proceedings, whereupon the mayor submitted the same to the Board of Aldermen, by whom it was approved. This was in the latter part of 1875.

Since that time the New York Elevated Railroad Company, upon the faith of the laws which have been recited, and its proceedings with the commissioners, at a very large expense, has completed its road from the Battery to Harlem river, a distance of about ten miles.

The bill before me provides that notwithstanding all the statutes that have been passed and all that has been done thereunder, passengers shall be carried the whole length of this road for five cents, a sum much less than is provided for in any of such statutes or stipulated in the proceedings of the commissioners.

I am of the opinion that in the legislation and proceedings which I have detailed, and in the fact that pursuant thereto the road of the company was constructed and finished, there exists a contract in favor of this company, which is protected by that clause of the Constitution of the United States which prohibits the passage of a law by any State impairing the obligation of contracts.[j]

But let it be supposed that this is not so, and that neither of these lessor companies are in any way protected from interference with their rates of fare, but that, on the contrary, they are subject to all the provisions of the general railroad act, under which they are both organized.

Section thirty-three of that act reads as follows:

'The Legislature may, when any such railroad shall be opened for use, from time to time alter or reduce the rate of freight, fare or other profits upon said road; but the same shall not, without the consent of the company, be so reduced as to produce with said profits less than ten per centum per annum on the capital actually expended; nor unless on an examination of the amount received or expended, to be made by the State Engineer and Surveyor and the Comptroller, they shall ascertain that the net income derived by the company from all sources, for the year then last past shall have exceeded an annual income of ten per cent. upon the capital of the corporation actually expended.'

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[j] U. S. Const. art. 1, § 10, clause 1.

Even if the State has the power to reduce the fare on these roads, it has promised not to do so except under certain circumstances and after a certain examination.

I am not satisfied that these circumstances exist, and it is conceded that no such examination has been made.

The constitutional objections which I have suggested to the bill under consideration are not, I think, removed by the claim that the proposed legislation is in the nature of an alteration of the charters of these companies, and that this is permitted by the State Constitution[k] and by the provisions of some of the laws to which I have referred.

I suppose that while the charters of corporations may be altered or repealed, it must be done in subordination to the Constitution of the United States, which is the supreme law of the land. This leads to the conclusion that the alteration of a charter cannot be made the pretext for the passage of a law which impairs the obligation of a contract.

If I am mistaken in supposing that there are legal objections to this bill, there is another consideration which furnishes to my mind a sufficient reason why I should not give it my approval.

It seems to me that to arbitrarily reduce these fares, at this time and under existing circumstances, involves a breach of faith on the part of the State, and a betrayal of confidence which the State has invited.

The fact is notorious that for many years rapid transit was the great need of the inhabitants of the city of New York, and was of direct importance to the citizens of the State. Projects which promised to answer the people's wants in this direction failed and were abandoned. The Legislature appreciating the situation, willingly passed statute after statute calculated to aid and encourage a solution of the problem. Capital was timid, and hesitated to enter a new field full of risks and dangers. By the promise of liberal fares, as will be seen in all the acts passed on the subject, and through other concessions gladly made, capitalists were induced to invest their money in the enterprise, and rapid transit but lately became an accomplished fact. But much of the risk, expense and burden attending the maintenance of these roads are yet unknown and threatening. In the meantime, the people of the city of New York are receiving the full benefit of their construction, a great enhancement of the value of the taxable property of the city has resulted, and in addition to taxes, more than $120,000, being five per cent. in increase, pursuant to the law of 1868, has been paid by the companies into the city treasury, on the faith that the rate of fare agreed upon was secured to them. I am not aware that the corporations have, by any default, forfeited any of their rights; and if they have, the remedy is at hand under existing laws. Their stock and their bonds are held by a large number of citizens, and the income of these roads depends entirely upon fares received from passengers. The reduction proposed is a large one, and it is claimed will permit no dividends to investors. This may not be true, but we should be satisfied it is not, before the proposed law takes effect.

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[k] Const. 1846, art. 8, § 1.

It is manifestly important that invested capital should be protected, and that its necessity and usefulness in the development of enterprises valuable to the people should be recognized by conservative conduct on the part of the State government.

But we have especially in our keeping the honor and good faith of a great State, and we should see to it that no suspicion attaches, through any act of ours, to the fair fame of the commonwealth. The State should not only be strictly just, but scrupulously fair, and in its relations to the citizen every legal and moral obligation should be recognized. This can only be done by legislating without vindictiveness or prejudice, and with a firm determination to deal justly and fairly with those from whom we exact obedience.

I am not unmindful of the fact that this bill originated in response to the demand of a large portion of the people of New York for cheaper rates of fare between their places of employment and their homes, and I realize fully the desirability of securing to them all the privileges possible, but the experience of other States teaches that we must keep within the limits of law and good faith, lest in the end we bring upon the very people whom we seek to benefit and protect, a hardship which must surely follow when these limits are ignored."

The bill was not passed over the veto.

March 12. To the Assembly: Transmitting the annual report of the State Board of Health.

March 13. To the Assembly:

**Veto of a bill entitled "An act to authorize the Board of Supervisors of the county of Schuyler to borrow money."**

"Chapter 482 of the laws of 1875 confers upon the several Boards of Supervisors the power and authority to purchase real estate and to erect thereon county buildings, and to borrow money on the county bonds, or other county obligations, for those purposes.

It is proposed, under this bill, to borrow money at a low rate of interest, and issue the obligations of the county for the same, and, with the money thus borrowed, to pay and retire a loan heretofore made by the State to the county for the erection of county buildings.

This amounts to merely changing the creditor and keeping the original loan on foot at a lower rate of interest. Any obligations of the county given on the substituted loan, will, I think, be given for the erection of county buildings as authorized by the statute above referred to, and may be issued by the Board of Supervisors without further legislative aid.

If there is any doubt on this subject, it might be well to proceed under the statutes passed in 1868, which especially provide for the issuing of new bonds to take the place of those outstanding, when by so doing a lower rate of interest is paid."

The bill was not passed over the veto.

March 16. To the Assembly:

**Veto of a bill entitled "An act to amend an act entitled 'An act to equalize the representation in the board of supervisors of Fulton county,' passed March 13, 1873."** [14]

"The original act, which is amended by this bill, provides that in addition to the supervisor by law elected in each of the towns in the county of Fulton, there shall be elected an additional supervisor for each two thousand and five hundred inhabitants that such town may contain, in excess of three thousand. Since the passage of that law, an amendment to the Constitution has prohibited the Legislature from passing a private or local bill providing for election of members of boards of supervisors.[1]

The bill now presented to me amends the law of 1873 in such manner as to provide that there shall be an additional supervisor elected in the towns named for every twenty-five hundred inhabitants, and one for each fractional part thereof, which shall not be less than twelve hundred and fifty.

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[14] The Fulton county supervisors bill was not passed over the veto, but another bill was passed relating to the same subject, and became a law, chapter 314, on the 20th of April. The vetoed bill amended the Fulton county supervisors act of 1873, chapter 77; the new bill repealed that statute.

[1] Const. 1846, art. 3, § 18, added 1874.

By the general law each town is entitled to elect one supervisor. Under the proposed bill, if the town contains twenty-five hundred inhabitants, two may be elected, and still another if it contains twelve hundred and fifty inhabitants in addition. It is apparent at a glance that the provisions of this bill are unnecessary and mischievous, beside being directly in violation of the provision of the Constitution above referred to.

And yet the bill has been printed, and has presumably occupied some of the time of committees and of the Legislature.

It is quite certain that the time and attention which have been devoted to the passage of this bill might well have been bestowed upon measures more important and valuable.''

March 16. To the Assembly:

**Veto of a bill entitled "An act to amend chapter two hundred and thirteen of the Laws of eighteen hundred and sixty-six, entitled 'An act to incorporate the village of Oswego Falls,' and the several acts amendatory thereof."**

'' This bill does not appear to have been drawn with the care which is necessary to make its provisions plain, simple and certain of execution.

Among other things, it serves to make the expense of repairs of sidewalks, the removal of snow and ice, and the abatement of nuisances, charges against the village, and also provides that such expense shall be collected from the parties owning or occupying the premises in front of or adjoining which the work is done.

The bill further amends the charter of the village by adding thereto a new section, which shall be known and designated as number forty-nine.

The charter now has a section numbered forty-nine, which contains important provisions, and which by the bill under consideration is not and ought not to be abrogated.

I am also informed that the authorities of the village who at first appeared anxious for the passage of the bill, have changed their minds since its introduction, and are now quite willing that it should not become a law."

The bill was not passed over the veto.

March 19. To the Senate:

**Veto of a bill entitled "An act to amend chapter five hundred and ninety-three of the laws of eighteen hundred and eighty, entitled 'An act to improve Jackson avenue, in Long Island City.'"**

"The law which it is proposed to amend by this bill appoints three commissioners to macadamize a part of Jackson avenue, in Long Island City, and to make and repair contracts as the same may be necessary, at a total expense not exceeding eighteen thousand dollars.

The amendments consist in the alteration of every section of the original act, the addition of two more sections, an entire change in the character and amount of the work to be done, and an increase in the expense allowed for the same to the sum of fifty thousand dollars.

The bill before me expressly ignores the local authorities of the city within which the work is to be done, and in effect transfers their powers in such cases, as contained in the charter, to the commissioners named in the bill.

The charter of the city provides that work of this description can only be done by the common council when a petition is signed therefor by the owners of a majority in lineal feet of the land fronting on the street within which the improvement is proposed.

This provision, perhaps, furnishes the explanation for the effort made to procure legislation in aid of this project, instead of leaving its expediency to be determined by the people directly concerned, and who are to be taxed to pay for the work.

I have before me a remonstrance signed by many of the owners of lots fronting on Jackson avenue, protesting against the bill. This, and the consideration that it is directly opposed to my ideas of home rule, constrain me to withhold my approval from the proposed legislation."

The bill was not passed over the veto.

March 23. To the Assembly:

**Veto of a bill entitled "An act increasing the number of notaries public in the counties of the State."**

"The number of these officers has from time to time been increased until there are now in the State, exclusive of those which have been appointed on the application of banks, 12,524 persons holding commissions as notaries public. These, with the commissioners of deeds appointed in the several cities, and the other officers authorized by law to perform substantially the same duties, are undoubtedly more than sufficient, if properly selected and located, to answer all the needs of the public.

Officers who may administer oaths are too numerous, and oaths themselves are too lightly regarded.

Applicants for the office of notary public often seek the appointment merely to hold an office which they suppose they may have for the asking, and they frequently have neither the intelligence nor character to make them useful in the performance of their duties. Cases have lately occurred in the courts where guilty parties have escaped the penalty of perjury because a notary could not testify to the administration of a legal oath; and fraudulent transfers of property are aided by the ignorance or venality of these officers.

The Executive Department is overrun with the business incident to the appointment of notaries public and issuing their commissions; they are often recommended by members of the Legislature on purely personal or partisan grounds, and usually the Governor must be personally ignorant of their character or qualifications.

I should be glad to approve a bill reducing the number of these officers, and providing for their appointment by some local authority."

The bill was not passed over the veto.

March 26. To the Assembly: Transmitting the annual report of the Trustees of the Sailors' Snug Harbor.

April 2. To the Senate:

**Veto of a bill entitled "An act to amend chapter 512 of the laws of 1879, entitled 'An act to authorize gaslight companies to use electricity instead of gas for the lighting of streets, public places and public and private buildings in cities, villages and towns within this State,' as amended by chapter 73 of the laws of 1882."**

"The amendment first proposed by this bill, provides that corporations formed for the purpose of manufacturing and using electricity for producing light, heat or power, shall not be confined in their operations to the county in which their certificate shall be filed.

It is evident that this contemplates the manufacture or generation of electricity, not only for lighting purposes, but for heat or power, and the transmission of the same by means of conductors to distant points.

This bill further authorizes said corporations to lay, erect and construct the necessary conductors and fixtures for transmitting and supplying electricity, over or under any public road, street or highway, or waters of the State, with the consent of certain local authorities. It also provides for the laying and construction of such conductors and fixtures, by such corporations, under or over private lands, subject to the rights of the owner to full compensation, which, if it cannot be agreed upon by the owner and said corporation, shall be fixed by commissioners to be appointed by the County Court.

The transmission of electricity by means of wires stretched upon poles, has up to this time been confined to telegraphic and lighting purposes. And this has been regarded as dangerous and objectionable, at least, so far as these wires and poles run within the cities of the State.

On the 23d day of March, 1882, the Senate passed a resolution authorizing its committee on cities to investigate whether or not the laying of telegraph and electric light wires under ground was practicable.

The committee, after taking evidence on the subject, submitted a report, in which they speak of the wires and poles used by telegraph and electric light companies, in the following terms:

'Your committee believe that the testimony submitted herewith, conclusively shows that the time has arrived when it is the plain duty of the Legislature to arrest the growth and secure the removal from our streets of these structures, which, without exaggeration, may be termed public and private nuisances.'

A bill is now pending in the Legislature based upon this report, providing that all telegraphic, telephonic and electric light wires and cables in incorporated cities having a population of five hundred thousand or upwards, shall, after the passage of this bill, be laid under the surface of the streets, and for the removal of existing wires and the poles sustaining the same.

The report and the bill above referred to, contemplate only the ordinary wires and poles used for telegraphic, telephonic and electric light purposes.

But the bill under consideration permits not only such wires to be placed above the surface and in the streets, but also conductors and fixtures for transmitting such currents of electricity as may be necessary to produce heat or power. We have no hint in the bill what these conductors and fixtures may be, but it is entirely evident that they cannot be less dangerous and objectionable than the wires and poles now in use and characterized by the Senate committee as nuisances.

"I am convinced that the safety and convenience of the people demand that the conductors and fixtures of the corporations mentioned in this bill should not be permitted upon or over the public streets.

"Another fatal objection to this bill is found in the provision allowing the corporations therein named to enter upon private property, and erect and maintain their structures thereon, without the consent of the owner. It seems to me that this is taking private property, or an easement therein, with very little pretext that it is for a public use.[m]

If a private corporation can, under authority of law, construct its appliances and structures upon the lands of the citizen without his consent, not only for the purpose of furnishing light, but in an experimental attempt to transmit heat and power, the rights of the people may well be regarded as in danger from an undue license to corporate aggrandizement."

The bill was not passed over the veto.

April 2. To the Assembly:

**Veto of a bill entitled "An act to authorize the extension of the time for the collection of taxes in the county of Richmond."**

"This bill is rendered unnecessary by chapter 147 of the laws of 1883, which provides for an extension of time for the collection of taxes in any of the towns of the State."

The bill was not passed over the veto.

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[m] Const. 1846, art. 1, § 6.

April 4. To the Assembly:

**Veto of a bill entitled "An act to empower the board of supervisors of the county of Onondaga, to donate the old county clerk's office and lot."**

"The object of this bill is to authorize the donation of an old county clerk's office, and the lot on which the same stands, now owned by the county of Onondaga, to the Onondaga Historical Association.

I have no doubt that the county could well afford to make this gift to so worthy and useful objects; and I certainly would not interfere with such a project, if I did not feel constrained to do so by the provisions of section 11 of article 8 of the State Constitution, which prohibits any county, city, town or village from giving any money or property to, or in aid of, any individual, association or corporation. This court house property concededly belongs to the county, and the proposed donation of the same seems to be entirely within the inhibition of the Constitution."

The bill was not passed over the veto.

April 4. To the Assembly:

**Veto of a bill entitled "An act to incorporate the Catskill Mountain National Camp Meeting Association of the Methodist Episcopal Church of the New York Conference."**

"No statement is made in the bill of the object of the proposed corporation, but its name seems to imply that the purpose is to enable the persons named therein, and their associates and successors, to inaugurate and maintain camp meetings.

No special act is necessary to effect this intent, as the formation of corporations of this description is expressly provided for by chapter 26 of the Laws of 1874.

The policy of the State against the formation of corporations by special act is so clearly evident from the provisions of the Constitution,[n] and the general laws passed in pursuance thereof, and the advantages of pursuing that policy are so apparent, that bills of the character of that now under consideration ought very rarely to be passed, and only when the object sought to be gained is not attainable by means of general laws.''

The bill was not passed over the veto.

April 5. To the Assembly:

**Veto of a bill entitled "An act for the benefit of hospital and other eleemosynary funds."**

'' For about fifty years the law of the State has limited and restricted the purposes for which trusts might be created, the time for which property might be withdrawn from alienation, and the accumulation of property held in trust. Time has, I think, vindicated the wisdom of such statutory limitations, and it is agreed that they are entirely in accord with the theory of our institutions.

This bill makes radical changes in the law, and permits trusts to be created for charitable, educational, eleemosynary, benevolent and humane objects, which depend entirely upon the terms of the instruments creating such trusts, without regard to the salutary restraints of existing laws. It seems to me that in the cases to which the bill applies the indefinite suspension of the power of alienation is allowed, and the accumulation of the increase of trust funds and property permitted to an extent which has in the past been regarded as mischievous.

No sufficient reason has been presented why we should abandon the settled and approved policy of the State on this subject.''

The bill was not passed over the veto.

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[n] Const. 1846, art. 8, § 1.

April 6. To the Senate:

**Veto of a bill entitled "An act to extend the time for the full payment of the capital stock of the Utica Ice Company, limited."**

"By the petition asking for the passage of this bill, it appears that the Utica Ice Company, Limited, was incorporated on the 7th day of April, 1881, under chapter 611 of the laws of 1875, with a capital stock of $20,000. By the provisions of that act, one-half of said stock is to be paid in one year from the time of the incorporation of said company, and the other half within two years from that date, or the corporation shall be dissolved. It further appears that the company is unembarrassed and doing a prosperous business.

Our laws in relation to the formation of corporations are extremely liberal, and those who avail themselves of their provisions should be held to a strict compliance with their requirements. There is manifestly no propriety in the passage of a special act to relieve a private corporation and its stockholders, as proposed in this bill. If the capital already paid in is sufficient for its purpose, it may, I think, reduce its stock under section 15 of the act. In any event, the failure to pay in the stock within the time limited, only subjects the company to be proceeded against and dissolved after a judgment obtained against it, and renders the stockholders, until such payment, liable for all the debts of the corporation.

This company, and its stockholders, have assumed for their own benefit certain relations to the State, to the public and to their creditors; and these relations should not be disturbed.

If corporations are to be relieved from their defaults for the asking, their liability to the people with whom they deal will soon become dangerously uncertain and indefinite."

The bill was not passed over the veto.

April 6. To the Assembly:

**Veto of a bill entitled "An act to authorize the supervisor of the town of Perry, in Wyoming county, to purchase lots of the trustees of Hope Cemetery, and to remove to and reinter therein the bodies now remaining in the old burial ground in the village of Perry, to sell said old burial ground, and to defray the expenses of removing the bodies therefrom and re-interring the same in new grounds."**

"The old burial ground from which the bodies are authorized to be removed by the provisions of this act, I am informed, has been conveyed to the trustees of the village of Perry 'to be used only as a burial place for the dead.' The trustees thus owning or having the legal supervision of this cemetery lot, all that could be done under the bill can be done under and in pursuance of sections 23 and 24 of chapter 482 of the laws of 1875, if the permission so to do is granted by the board of supervisors, as provided in said sections.

The parties interested in the passage of this bill should apply to the board of supervisors of the county of Wyoming for the relief sought. That body has full power in the premises, and can better judge of the merits of the application than the Legislature."

The bill was not passed over the veto.

April 9. To the Assembly:

**Veto of a bill entitled "An act to amend chapter five hundred and nineteen of the Laws of eighteen hundred and seventy, entitled 'An act to amend the charter of the city of Buffalo,' passed April twenty-eighth, eighteen hundred and seventy."**

"The object of this bill is to entirely reorganize the fire department of the city of Buffalo.

The present department was established in 1880, under chapter 271 of the laws of that year, and its management and control are vested in three commissioners, who, pursuant to said law, were appointed by the mayor of the city.

The gentlemen thus appointed are citizens of unquestioned probity, intelligence and executive ability, and enjoy and deserve the respect and confidence of all their fellow-townsmen.

Having very recently had official relations* with this department, I cannot but testify to its efficiency and good management, and the economy with which its affairs are conducted. And yet, before it has been three years in operation, it is proposed, by the bill under consideration, to uproot and sweep away the present administration of this important department, and venture upon another experiment. This new scheme provides for the appointment, by the mayor, on the first Monday in May, 1883, of a chief of the fire department, one assistant chief and two district chiefs; the city is divided into two fire districts, and it is made the duty of the district chiefs to take the charge and management of all fires in their respective districts until the arrival of the chief or assistant chiefs.

I can see no reason for dividing, by law, the city into fire districts, unless it be to make new places to be filled by the city executive.

The provision that the district chief shall have charge and management of a fire in his district, until the arrival of his superior, gives excuse for the chief of another district, though first on the ground, to refrain from interference.

A fire department should be organized with a view to prompt and effective action upon a sudden emergency. Every member of the department should be, at all times, ready for service, and there should be no mischief invited, by rules too inflexible, as to who should have charge and management in time of danger to life and property.

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* Governor Cleveland was mayor of Buffalo in 1882.

Although the mayor of the city, under the provisions of the bill, has the absolute power of appointment to these offices, he may, in case of vacancy by death, resignation, removal or otherwise, make special appointments, until permanent appointments are made. This was evidently copied from the charter of 1870, which allowed the mayor to appoint fire superintendents, by and with the advice and consent of the common council. It was intended to permit the filling of a vacancy by the mayor during the time which should elapse before a successor could be confirmed by the council. But in a case where no confirmation is necessary, such a provision is needless, incongruous and mischievous. The mayor should be as well prepared to make a permanent appointment under this bill, in case of a vacancy, as a temporary one. This provision would seem to give him the power by calling an appointment a temporary one, to retain the appointee as long as he sees fit, and, under the pretext of a permanent appointment, displace him by another without charges or an opportunity to be heard.

By section six of the bill an appeal is permitted from the decision of the mayor upon the trial of any of these officers, to the Supreme Court of Buffalo. There is no such court in existence.

But waiving further criticism of details, my attention is directed to section twenty of the bill, which, to the promoters of this measure, is undoubtedly its most important feature. It provides that immediately upon the appointment and qualification of the chief, the terms of the present commissioners shall cease and determine, and that the terms of office of all the other officers, firemen and employes shall also cease and determine, ten days thereafter. Great care is exercised to provide that the chiefs and all the firemen and employes appointed under the new scheme shall be discharged only for cause, and after due hearing and an opportunity for defense; but to those now in the service, numbering about two hundred drilled and experienced men, no such privileges are accorded.

The purpose of the bill is too apparent to be mistaken. A tried, economical and efficient administration of an important department in a large city is to be destroyed, upon partisan grounds or to satisfy personal animosities, in order that the places and patronage attached thereto may be used for party advancement.

I believe in an open and sturdy partisanship, which secures the legitimate advantages of party supremacy; but parties were made for the people, and I am unwilling, knowingly, to give my assent to measures purely partisan, which will sacrifice or endanger their interests."

The bill was not passed over the veto.

April 12. To the Assembly:

**Veto of a bill entitled "An act to provide for the construction and maintenance of an additional public bath in the city of New York."[15]**

"I am informed by the mayor of the city of New York that this bill has been considered by the heads of the departments of the city government, and by them declared to be objectionable, for the reason that the legislation proposed deprives the city authorities of all voice concerning the necessity, location or expense of the bath.

If it does not now exist, authority should be conferred upon the local authorities of New York to enable the construction of public baths at the city's expense, whenever and wherever in their judgment the public good of the city requires."

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[15] This bill was not passed over the veto, but another bill providing for four free public baths in New York, was passed and became a law, chapter 425, on the 17th of May.

April 16. To the Assembly:

**Veto of a bill entitled "An act to authorize the Comptroller to compromise and settle claims against the sureties of the First National Bank of Buffalo."**

"The title of this bill defines it to be an act to authorize the Comptroller to settle certain claims. But the Comptroller is not mentioned in the bill itself, and the authority to settle and compromise the claims mentioned is conferred upon the State Treasurer, with the approval of the Attorney-General.

While this latter and complete inconsistency between the title of the bill and its enactments renders its disapproval necessary, I deem it not improper to add that in my opinion its purpose was objectionable.

The persons who seek to be relieved under this bill signed a bond to the State for the safe keeping and repayment on demand of certain moneys deposited in behalf of the State in the First National Bank of Buffalo.

The bank has failed and is unable to refund the State's deposits. The securities in the bond have thus become liable to pay the money, and I can see no reason why they should be relieved.

I am willing to do what I can to check the growing impression that contracts with the State will not be insisted upon or may be evaded. The money deposited with the bank was public money belonging to the people, and I regard it the duty of all having the care of State affairs to see to it that no part is lost by an improper indulgence to those who have agreed that it should be safely kept."

The bill was not passed over the veto.

April 16. To the Assembly:

**Veto of the following item in the General Appropriation bill, chapter 243:**

"'And for establishing reference points by which to locate bulkhead lines and grants of lands under water, one thousand three hundred dollars.'

I am not aware of any necessity for the work here proposed, but if it is necessary, manifestly the duty is one which properly belongs to the State Engineer and Surveyor.

My convictions against inaugurating a work of this character, and in this way, are strengthened by the experience of the State in the matters of the State survey and the Adirondack survey.

The State survey was established by an item in the appropriation bill of 1876, which appropriated $20,000 'for making an accurate trigonometric and topographical survey of the State for the determination of State and county lines,' and to locate at least one point in each county for the guidance of local surveyors. If the originators of this survey had in contemplation such an expensive and elaborate scheme as has been developed from the authority thus given, it is evident from the original law here referred to that such was not the intention of the Legislature. This seems to be confirmed by the fact that the succeeding Legislature, of which the same Senate was a part, made no provision for continuing the survey, and the following year an appropriation for that purpose was only made upon considerations which appear in the following memorandum filed by Governor Robinson, with his approval of the measure:*

'The State survey, as originally proposed, contemplated a work of immense magnitude, of unlimited expense, and of little, if any, practical value to the people who were to pay for it. So long as it presented this appearance, I embraced every proper opportunity of placing upon record my earnest disapproval of it. I am now informed that the visionary and objectionable views originally entertained have been wholly abandoned, and that instead of surveying the whole State, it is proposed simply to fix at small expense a few points which may hereafter be used by any counties, towns or individuals desiring to make surveys for themselves in accordance with the new system. The bill is approved for the reason that it is in harmony with this greatly modified and unobjectionable plan.'

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*Ante, p. 248.

That the promoters of the scheme have disappointed the expectations of my predecessor is shown by the fact that since it was made $76,700 have been appropriated, and the item of this year carries it to $92,500, making an aggregate cost of $118,300, while in half the counties of the State nothing has been done. I have approved the appropriation of $15,800 in the bill under consideration with great reluctance, and only for the purpose of providing means to enable the accurate fixing, as was originally proposed, of some point or line in each county for the guidance of local surveyors. With this sum and the remainder of last year's appropriation remaining unexpended, I shall insist that this work shall be fully completed.

The appropriation of $2,500 to complete the Adirondack survey is approved, since by law that work must terminate during the next fiscal year. It originated in much the same way as the State survey, and has cost, exclusive of the amount paid for printing the reports, $77,275. It is for the people to judge whether any public good has been served by this expenditure.

The cost of printing the reports of these surveys has been scandalously large, and I am constrained to here express my regrets that the Legislature has, at its present session, ordered, by resolution with which I have not the power to interfere, a reprint of certain of these books at an expense of at least $15,000.

The aggregate cost of these two surveys to date, including printing, exceeds a quarter of a million of dollars, a sum to my mind wholly disproportionate to the value of the practical results obtained, and I cannot believe that they would have been ordered if the Legislature which originated them had understood that they were to be developed into regular departments of the State government, calling for a large annual outlay of the public funds for support.

In the light of such experience, I am unwilling to give my assent to an appropriation which has the appearance of being the initiative of a similar scheme of indefinite duration and unknown expense."

The item was not passed over the veto.

April 20. To the Assembly:

**Veto of a bill entitled "An act to incorporate the Oatka Hose Company of Le Roy, New York."**

"By chapter 397 of the laws of 1873, ample provision is made for the creation of corporations such as is proposed in the bill. I can see no reason for a special enactment in this case, unless the purpose is to make this hose company independent of the village authorities where it is to be located. This, of course, should not be permitted."

The bill was not passed over the veto.

April 20. To the Assembly:

**Veto of a bill entitled "An act to authorize the Comptroller to sell a judgment obtained by the loan commissioners of Delaware county, against David Horton."**

"This bill originates in the desire of a certain judgment creditor of David Horton, to procure the judgment owned by the State, to aid him in the collection of his debt. If the judgment is of value, there seems to be no good reason why it should not be enforced for the benefit of the State, in the ordinary way.

I have full faith in the care and caution of the Comptroller; but there is no guaranty that if this bill becomes a law, a sum will be offered for which the judgment should be transferred, in which case its enactment will be useless.

If it is thought best to dispose of this judgment, there should be a sum fixed in the bill based upon an offer made, upon the payment of which an assignment of the same should be directed."

The bill was not passed over the veto.

April 23. To the Assembly:

**Veto of a bill entitled "An act to authorize the extension of the time for the collection of taxes in the town of Hornellsville, in the county of Steuben."**

"This bill extends the time for the collection of taxes in the town of Hornellsville to the first day of May, 1883.

This is entirely unnecessary, because by chapter 147 of the laws of the present session of the Legislature, the time for the collection of taxes in all the towns of the State was extended to the first day of June, 1883."

The bill was not passed over the veto.

April 23. To the Assembly:

**Veto of a bill entitled "An act to revise and amend the law in relation to the village of Lyons, in the county of Wayne."[16]**

"This bill does not, by its terms, purport to amend any other law, but appears to be an entirely new charter, containing some of the provisions embraced in previous statutes relating to the corporation of the village of Lyons, and some of the provisions of the general village law. There are also found in this bill the strikingly original and preposterous features usually discovered in such contrivances, which, if not violations, are certainly invasions of that clause of the constitution which prohibits the passage of a local or private bill incorporating villages.[o]

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[16] See Reed v. Schmit (1886), 39 Hun, 223, where it was held that the constitutional prohibition against special village charters (article 3, section 18) did not apply to an act amending the charter of a village previously incorporated.

I shall only call attention to a few sections of this charter, furnishing abundant reasons for my disapproval.

The first section provides that the corporation may, with the approval of the trustees and consent of a majority of the taxpayers voting at a village meeting, receive by gift, grant, devise, bequest or purchase, real or personal property in fee or in trust, for such time and purposes as shall be specified in the instruments creating the trust.

This permits this village to acquire and hold property of any kind and amount, for purposes in no way connected with the ordinary objects of the corporation. It also permits the holding of such property in trust without any reference to the limitations of the Revised Statutes in relation to the creation of trusts, thus substituting the terms of the instrument creating the trusts for the law of the State.

Section eight provides that special meetings of the board of trustees at which every member is present, may be held without special notice or delay; and that a written admission of such notice and waiver of delay, shall, in those particulars, be equivalent to personal attendance; but section eleven declares that a majority of the board of trustees shall constitute a quorum for the transaction of business.

It might well be a subject of speculation whether or not the equivalent of personal attendance, afforded by the admission of service and waiver of delay, would be counted in making up this quorum. If so, the attendance thus represented might, without difficulty, secure a hearing upon the matters discussed at such meeting.

By section thirteen the trustees of the village are given power at all times to arrest or cause to be arrested, by any person, and without process, any and all criminals, as well as vagrants and disorderly and drunken persons; and if an inhabitant of the village shall refuse to aid in making such arrest upon the command of any trustee, he shall be subject to a fine not to exceed twenty-five dollars, and imprisonment till the fine be paid, not exceeding thirty days.

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[o] Const. 1846, art. 3, § 18, added 1874.

Without analyzing these startling provisions, it is sufficient to say that they do violence to all preconceived ideas touching the right to arrest, and the protection of the rights of the citizen.

Section twenty-five provides that the trustees may reduce or release any general village tax, assessed against any person whose age or infirmity and straitened circumstances, shall in the unanimous judgments of all the trustees, entitle him or her to such relief.

The power to tax should be exercised in such a manner as to do exact justice to all who have to bear its burdens, and none should be released in case of supposed hardship, and their share of taxation exacted from their neighbors.

It is provided in section thirty-four, that no payments to the treasurer shall discharge, in any degree, any obligation or indebtedness to said village, unless a receipt therefor, given by the treasurer, shall, within five days of its issue, be filed with the village clerk.

It must be conceded that a law declaring a debt not discharged by payments unless the receipt therefor is filed in a particular place, would tend to great injustice, and must be considered an unnecessary and unjustifiable restriction of the ordinary rules of law.

There are other sections of this charter which might be criticised, to which I will not refer. It is quite apparent that something should be done to prevent the introduction or, at any rate, the passage of such bills as this. They seem often to be prepared without any care, or without any appreciation of the evils to be remedied, or the manner of accomplishing improvements. Once here, they attract but little attention, because they are supposed to be of no importance to the Legislature, being local in their nature. And then they are good naturedly allowed to pass and to reach the Executive, a mass of impracticable inconsistencies and incongruous and useless crudities, which, if allowed to go upon our statute books, would be a disgrace to the State and the law-making power.

I am of the opinion that villages that have special charters which they claim to amend, should be driven to reorganize under the general law, which if in any way deficient should be amended to reach all reasonable needs."

The bill was not passed over the veto.

April 23. To the Assembly:

**Veto of a bill entitled "An act to sell and divide the property of the First Congregational and First Baptist society of the town of Kendall, in the county of Orleans."**

"The church property mentioned in this bill has not been used by the church society to which it belongs for a number of years, and the said society has, I am informed, ceased to act in its corporate capacity; but it is represented that there is at least one of its trustees living in the county of Orleans. This seems to be precisely one of the cases contemplated by chapter 424 of the laws of 1872, which provides for the sale and disposition of church property when any religious society, incorporated by law, shall cease to act in its corporate capacity. Under that statute the facts are presented to the Supreme Court, which, if it shall deem proper, may order a dissolution of such religious society and a sale of its property, and direct in what manner the proceeds of such sale shall be applied.

Instead of pursuing this method, which gives opportunity for the protection of all interest in the property, it is sought by this bill to authorize the trustees or trustee of this church to convey its property to the town of Kendall, and if there are no debts against the society, to so convey the same for a mere nominal sum.

This seems to be a very favorable scheme for the town of Kendall, but no protection seems to be afforded to any other rights.

The power of the Legislature to authorize a trustee to dispose of property, in direct contravention of his trust and for a nominal consideration, to a beneficiary selected by the Legislature, should not at this day be even suspected."

The bill was not passed over the veto.

April 25. To the Assembly:

**Veto of a bill entitled "An act for the relief of surviving members of First Regiment, New York Mexican Volunteers."**

"This bill provides that the sum of twelve dollars per month shall be paid, in quarterly payments, for the term of two years, to every person who shall appear, on due evidence, to have been a member of the First Regiment of New York Volunteers, commanded by Colonel Ward B. Burnett, in the war between the United States of America and the Republic of Mexico, and residing in this State at the time of the passage of said bill. The sum of fourteen thousand nine hundred and seventy-six dollars, or so much thereof as may be necessary, is appropriated for the purpose mentioned in the bill.

I am by no means certain that the legislation thus proposed involves a correct principle, or that the appeal on which it rests should be answered by favorable action. Without regard, however, to the propriety of awarding the relief sought, but as a question of principle, examination of former legislation on the subject will furnish proof that enough has been done in this direction, and fully demonstrates that justice to the taxpayer should replace the generosity of the State.

By chapter 508 of the laws of 1851, fifteen thousand dollars per annum for two years thereafter was appropriated for the purpose of paying the members of this regiment the sum of twelve dollars each month.

By subsequent legislation appropriations have been made to the members of the regiment as follows:

In the year 1862, $288; in 1870, $12,000; in 1871, $5,000; in 1875, $5,000; in 1876, $2,500; in 1877, $1,888; in 1878, $3,638.

After the donation of more than $60,000 to this regiment from the funds of the State, as above indicated, it seems to me further relief ought not to be insisted on."

The bill was not passed over the veto.

April 30. To the Senate:

**Veto of a bill entitled "An act to amend chapter fifty-eight of the Laws of eighteen hundred and eighty-two, entitled 'An act to amend chapter four hundred and eighty-two of the Laws of eighteen hundred and seventy-five, entitled 'An act to confer additional powers of local legislation and administration and to regulate the compensation of supervisors.'"**

"This bill purports to amend section 8 of chapter 482 of the laws of 1875; and I think its title should have so expressed its object.

But aside from this error or informality, a more serious objection is found in the fact that the amendment made by this bill to the law of 1875, excepts the county of Monroe from the provisions in said section contained, fixing the compensation of supervisors. All previous laws regulating such compensation are repealed, and I cannot find that the pay of the supervisors of Monroe county is fixed by any other subsequent statute.

If, as I suppose, there is no such statute, the effect of the proposed legislation would be to except the supervisors of Monroe county from the operation of the only statute by virtue of which they are entitled to compensation for their services.

There are now no less than six counties excepted from the general statute of 1875, fixing the amount to be paid to supervisors, and special statutes have been passed on this subject applicable to such counties. I think no more should be excepted, unless good reasons exist therefor. Uniformity of laws touching this matter certainly is desirable, since it avoids uncertainty and confusion."

The bill was not passed over the veto.

April 30. To the Assembly:

**Veto of a bill entitled "An act authorizing the board of claims to hear and adjust the claim of Vincent Conkling, of Horseheads, New York."**

"It is expected that the court or board recently established to hear and determine claims against the State, will proceed according to the rules of law, and that no citizen will be prevented from presenting his complaint. I cannot believe that any new statute is necessary to secure this right. Whether the complainant succeeds in establishing any liability or not, depends upon considerations, which, under the Constitution and laws, should not be interfered with by the Legislature.

I have before me a decision of the Canal Appraisers denying for very good reasons, the claim of the Port Byron free school district, which I suppose, was based upon the same facts as the claim mentioned in the bill under consideration.

If this be true, the claimant ought not to recover in any event."

The bill was not passed over the veto.

April 30. To the Assembly:

**Veto of a bill entitled "An act to provide for laying out, altering and improving highways in which two or more towns are interested."**

"This bill provides that twelve freeholders may apply in writing to the highway commissioners of the town in which they live, for the institution of proceedings for locating, opening and constructing any new highway, or for the change of location, or improving of any existing highway, which is located in part or wholly within any town or towns other than the one in which they live.

It is further provided that on receiving such application, the commissioners to whom it is addressed shall apply to the county court, upon notice to the commissioners of highways in the several towns interested in the improvement, and that after due hearing, the court shall appoint certain commissioners; and if, after examination, they shall determine that the work should be done, it shall be executed by said commissioners. The expense of the improvement, including the cost of land taken, it is provided, shall be apportioned by said commissioners among the several towns in the county, according to the benefits received, and the part of the cost and expense assessed on each town shall be added, by the Board of Supervisors, to the amount of money to be collected from said town for town expenses.

It will be observed that no part of the highway to be located, opened, constructed, changed or improved, need be within the town where the persons applying for the work to be done reside, and that the commissioners of highways of the town within which the improvement is made, are not the ones who institute the proceedings. They are simply notified that within their town the commissioners of some other town are taking steps to construct, locate, open, change or improve a highway. The discretion which they should exercise for the protection and welfare of the people who elected them, is displaced by the order of a county judge and the determination of commissioners of his creation. The taxpayers may see extensive and costly work going on in their town, against their protest, and which they may deem entirely needless, but for which they must pay such sum as strangers having the work in hand shall determine. There is no participation by any town officer or resident taxpayer either in the work or in fixing the amount of taxation. Twelve freeholders of perhaps a distant town, and not necessarily within the same county, declare, under oath, in an application to the highway commissioners of the town of their residence, that this work is necessary and important to them and other inhabitants of their town, in facilitating travel, and the transportation of farm produce and other property, and the proceeding is set on foot and carried to its conclusion with no right of appeal on the part of those whose town is invaded, and whose taxes are increased without their consent, for the benefit of non-resident freeholders.

A proposed law should be judged by what it will permit, and not by its probable operation.

Measured by this standard, this bill utterly ignores the idea of home rule and the right of the people to regulate the affairs of their locality; and in its principles and details is thoroughly bad and vicious."

The bill was not passed over the veto.

April 30. To the Assembly:

**Veto of a bill entitled "An act for the improvement of the highway between Thompson's mill and Fort Miller village, in Washington county."**

"This bill appropriates the sum of $5,000 for the purpose of raising the road bed of the highway between Thompson's mill and Fort Miller village, to such a height as shall prevent the overflow of the said highway, from the Hudson river, occasioned by raising the Schuylerville dam in 1874, and authorizes the Superintendent of Public Works to make such improvement.

It seems that a bill for the same purpose has, at least once before, been passed, and failed to receive executive approval, and I think the work is such as the State should not be called on to do. If the cause of the bad condition of the highway is the building of a dam in 1874, the relation between cause and effect seems somewhat remote, in point of time.

And I am further of the opinion, that a fatal objection to the bill is found in the provision of the Constitution, which declares that the Legislature shall not pass a private or a local bill for laying out, opening, altering, working or discontinuing roads, highways or alleys.''[p]

The bill was not passed over the veto.

April 30. To the Assembly:

**Veto of a bill entitled "An act to authorize and empower the State Board of Claims to hear, audit and determine the claim of Clinton county for moneys expended in the trial and execution of convict Henry King, for crime committed during his imprisonment in Clinton prison, and to make award therefor."**

''I deem this bill entirely unnecessary; and the provision authorizing and requiring the board to hear and adjust said claim, and award the amount thereof, or such sum as the board shall consider equitable and just, is very objectionable as a legislative determination that some compensation should be awarded to the claimant.''

The bill was not passed over the veto. [See 1882, note 33, *ante,* p. 782; also L. 1887, Chap. 440, authorizing the submission of this claim to the Board of Claims.]

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[p] Const. 1846, art. 3, § 18, added 1874.

May 2. To the Assembly:

**Veto of a bill entitled "An act requiring the clerk of the county of Albany to file certificates of the sale and transfer of all real estate in the city of Albany with the assessors of said city."**

"This bill provides that for each certificate filed with the assessors as therein directed, the county clerk shall receive the sum of twenty-five cents. The object of filing such certificates is to give the assessor better means of information as to the ownership of property upon which the taxes of the city are to be assessed. This purpose is a proper one, and the expense attending it, under the provisions of the proposed bill, would not be very great.

But the new charter of the city of Albany, which has taken effect since the introduction of this bill, increases the compensation of the assessors, and provides them with a clerk, who can easily and without additional expense procure by a daily examination at the clerk's office, the information for the use of the assessors, which is contemplated in the proposed bill.

Under such circumstances I am of the opinion that the bill is unnecessary, and the expenditure which it involves not justified."

The bill was not passed over the veto.

May 4. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *May* 4, 1883.

"I deem it my duty to remind you of the importance of giving effect to the law lately passed by the Legislature 'to amend the law relating to alien immigrants, and to secure an improved administration of alien immigration.'

This statute was the result of investigation which demonstrated that the present management of this very important department is a scandal and a reproach to civilization. The money of the State is apparently expended with no regard to economy, the most disgraceful dissensions prevail among those having the matter in charge, barefaced jobbery has been permitted, and the poor emigrant who looks to the institution for protection, finds that his helplessness and forlorn condition afford the readily seized opportunity for imposition and swindling.

These facts lift the efforts to reform the management above partisan considerations, and make the cause one in which every right-minded man should be enlisted, and one in which those chosen to protect the rights and the honor of the people of the State should gladly co-operate.

The law lately passed, it is admitted, seeks in a practical way to remedy the evils referred to.

In the enforcement of this law, it became my duty to send to the Senate, for its confirmation, the name of a person who should act as commissioner, and who should have charge of the important matters provided for.

This I have done. In the discharge of this duty I was fortunate enough to be able to present the name of a citizen of the State, of conceded integrity, ability and administrative capacity, who enjoys the respect and esteem of all who know him, and whose benevolent nature would insure the protection and kind care of the destitute and friendless strangers who should be put in his charge.

But the unmistakable indications are that in its closing hours the Senate will refuse to confirm his appointment and thus continue the present scandals and abuses.

Some of those now in charge of this department and their beneficiaries are on the ground and about the halls of legislation, seeking to retain their control and their abused advantages.

The refusal to confirm the appointee is not based upon any allegation of unfitness, nor has such a thing been suggested. It concededly and openly, as I understand the situation, has its rise in an overweening greed for the patronage which may attach to the place, and which will not be promised in advance, and in questionable partizanship, which is insisted on, at the expense of important interests.

There has not been a reason suggested why the name of the appointee should be withdrawn, and I should be unjust and derelict in my duty if I should pursue that course. The Senate is reminded, too, that the present situation of affairs precludes my submitting another name if I desired.

I am profoundly sensible of the absolute power and right of the Senate in the premises, and do not seek to question it even in this case. Every member knows the motives for his conduct, and must justify them to his constituents.

The fact remains, however, that a captious opposition to the execution of the best remedial law of the present session of the Legislature perpetuates the oppression of the immigrant and the practice of unblushing peculation. I have endeavored to co-operate with the Senate in supplementing the passage of the law, by putting the machinery in motion for its execution; and I may, perhaps, be allowed to express the hope that its operation may not be defeated. If it is, the responsibility must rest where it belongs. [See note 5.]

GROVER CLEVELAND."

May 4. The Legislature adjourned without day.

April 27.

**Memorandum filed with Senate bill chap. 329, increasing the number of Justices of the Supreme Court, which became a law without the Governor's approval.**

"I am not willing to approve Senate bill, entitled 'An act to provide for organizing in the Supreme Court five general terms thereof, and for the election of justices of that court in addition to those now in office,' for the reason that I do not believe the number of additional judges provided for in said bill is necessary, and because I am satisfied that the increase of taxation which it involves, is not justified.

But I think an increase of judges in some of the districts of the State is necessary and proper, and in view of the fact that there is a question as to whether the constitutional amendment can be acted on by the Legislature, except at its present session, and the further fact that there seems to be no prospect that any other measure on the subject can be passed, at this time, I have concluded to allow the bill to become a law by the lapse of ten days from its presentation to me, pursuant to the provision of the Constitution."[q]

## THIRTY-DAY BILLS.

May 16.

**Veto of Senate bill entitled "An act to amend chapter 466, of the Laws of 1853, entitled 'An act to provide for the incorporation of fire insurance companies.'"**

"This bill provides for a relaxation of the present law in regard to the securities in which fire insurance companies shall be permitted to invest their funds.

I think the change proposed is in the wrong direction, and that too much care can hardly be exercised to protect the interests of policyholders in institutions of this kind.

If any change is made as to the securities to which these companies may invest their funds, such securities should be specifically stated in the statute, and not left to the approval of the Superintendent of the Insurance Department.

The people should have an opportunity to learn by an inspection of the law, the character of the investments which corporations, so closely connected with their interests, are permitted to make.

Because I have not been able to discover that any good will result from the legislation proposed, to those who most need protection, and because, on the contrary, I fear that if this bill should become a law, important interests might be endangered, I am constrained to withhold my approval from the same."

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[q] Const. 1846, art. 4, § 9, am. 1874.

May 16.

**Veto of Assembly bill entitled "An act to amend the Code of Civil Procedure."**

"This bill changes the law in regard to the publication of the reports of the Court of Appeals.

The statute now in force directs that contracts for such publication shall be entered into by the Secretary of State, Comptroller and State reporter, in behalf of the State, extending over a term of three years.

The bill under consideration provides that contracts for five years shall be made for the publication of these reports, on behalf of the State, by the Court of Appeals, or by such members or officers of that court as it shall designate for that purpose.

It seems to me that the authority to make these contracts, on the part of the State, is very properly lodged, as a matter of business, in the two State officers named in the law now in force and the State reporter. It is apparent, I think, that the latter officer is, or should be, a very useful and important member of the contracting body. But by the proposed law he has no part in the matter, and the power to make the contracts is left, in a very indefinite way, to the Court of Appeals or some members or officers thereof.

My attention has not been called to any great abuses which exist under the present mode of doing this business; I have no assurance that the Court of Appeals desire to be invested with this contracting power; the paternity of the proposed bill seems somewhat obscure, and I am not convinced that any certain benefit would result from a change in the existing law on this subject.

Under such circumstances I deem it my duty to disapprove the legislation proposed."

May 19.

**Veto of Assembly bill entitled "An act to amend chapter four hundred and nineteen of the Laws of eighteen hundred and eighty-two, entitled 'An act to revise the statutes of this State relating to banks, banking and trust companies.'"**

"I have listened to the arguments of the friends of this measure, and am still convinced that the present law should not be changed in the manner proposed.

The bill before me provides that savings banks may invest the money of depositors in bonds and securities which are excluded by the present carefully prepared statutes regulating this subject. Among other things, it permits the investment of such funds "in other good securities (excepting bills of exchange, promissory notes, deposits of personal property, and stocks to which by law the personal liability of stockholders attaches) which may be approved by the Superintendent of the Banking Department, the Governor, Comptroller and State Treasurer, or a majority of them."

It must be conceded, I think, that no absolute certainty attends the judgment of men in relation to the matter of good securities. The State officers mentioned in the bill should not be burdened or intrusted with this important duty.

I see no provision in the bill by which any security can be withdrawn from the list if once approved by these officers, even though it may become unsafe or worthless as an investment.

Considerations have been earnestly urged upon me touching the ability of savings banks to pay a fair interest to depositors, with the present limitations upon the character of their investments.

But I am firmly of the opinion that these institutions are, as their name implies, a place of deposit for the savings of those among the poor and laboring people, who see the propriety of putting aside a part of their earnings for future need, or as the beginning of an accumulation. Such depositors are not, and should not be, investors seeking, as a paramount purpose, an income by way of interest on their deposits. When they come to that, there are other instrumentalities which should be employed.

Absolute safety of the principal deposited is what the patrons of savings banks should seek; and any governmental control over these institutions should, first of all, be directed to that end.

I am not satisfied that this is done, when State officials, already charged with onerous duties, are called to decide upon the value of proposed securities, and when the safety of deposits is left to their determination, and the care of directors and trustees often tempted to speculative ventures, beyond their power to resist.

A due regard to the protection of a class of citizens which should especially deserve the care of the State, requires, I believe, that the institutions having their savings in charge should be limited in the use of such deposits to investments described in the law, and which as nearly as possible insure absolute exemption from loss.

I am unwilling to assent to the increased risk which, I am convinced, lurks in the provisions of the proposed bill."

May 29.

**Veto of Assembly bill entitled "An act to provide for the construction, maintenance and operation of street railroads in cities, towns and villages."[17]**

"I have no doubt that a general law providing for the construction of street railroads, should be enacted; but the provisions of this bill are such, and my conviction of its questionable designs is so well settled, that I have determined to refuse to approve the same.

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[17] Another street railroad bill was passed in 1884, and became chapter 252. Certain provisions of this act were sustained in Re Thirty-fourth St. R. Co. (1886), 102 N. Y. 343; Re New York Cable R. Co. (1886), 40 Hun, 1.

From its title, it appears to be a scheme for the construction, maintenance and operation of street railroads in all the cities, towns and villages of the State.

And yet when any streets are excepted from the operation of this act, they are streets in the city of New York. Whenever any provision is made for compensation for the use of streets, they apply alone to that city. It is only in the city of New York that corporations operating street railroads may, by the terms of this bill, be obliged to pave and keep in permanent repair any portion of the street between and along its tracks; and one of the limitations of the time within which in a certain case, a railroad is to be commenced and completed, is confined to railroads to be constructed in that city. Undoubtedly the provisions of the bill which are suspected or obscure, were inserted to meet the wants of New York corporations, and in all the discussion to which I have listened, this measure has been treated as though its operation concerned solely the city of New York.

Perhaps none of these things render the bill under consideration invalid, and yet they furnish substantial objections, and give rise to questions of much importance to other cities in the State. It cannot be difficult to frame a bill which in spirit, as well as in strict construction, would be a general law, protecting all localities alike, and avoiding the evils sure to follow a furtive attempt, under the guise of a general statute, to answer only private and local purposes.

The Constitution of the State prohibits the passage by the Legislature of any private or local bill 'granting to any corporation, association or individual the right to lay down railroad tracks.'[r]

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[r] Const. 1846, art. 3, § 18, added 1874.

It also declares that the Legislature shall pass general laws required for such cases; and it provides that ' no law shall authorize the construction or operation of a street railroad, except upon the condition that the consent of the owners of one-half in value of the property bounded on, and the consent also of the local authorities having the control of, that portion of a street or highway upon which it is proposed to construct or operate such railroad, be first obtained.'

The intent and purpose of this limitation is apparent. The streets and highways of a city, town or village, are under the control and charge of local authorities, as agents of the people of the localities, and to be managed and regulated for their benefit. It manifestly should be necessary, before such streets and highways can be used for any other than their ordinary purposes, that the consent of such local authorities be obtained.

But the owners of the property bounded by such streets and highways as are to be put to this new use, are very properly supposed to retain a certain interest or easement in the same, which they have never surrendered to any local authority, and which involves their rights, their convenience and their comforts as citizens. It is then, in exact accordance with the spirit of our institutions, that before the streets fronting their dwellings and premises should be incumbered and interrupted by the tracks of a street railroad, their wishes should be consulted and their consent obtained; and in order to prevent a captious opposition from defeating a desirable improvement, it is provided that the consent of the majority in value of such owners shall be sufficient.

It is here suggested that the object of this constitutional limitation is not accomplished if the owners of property bounded by such streets can be concluded by the consents of prior owners and occupants, to which they are in no way privy, or of which they have no knowledge.

The constitution, it will be seen, declares that no law shall authorize the 'construction or operation of a street railroad (and not the formation of a company for that purpose), *except upon the condition* that the consents spoken of 'be first obtained.' This language certainly conveys the idea that the grant is to contain this condition, to be thereafter performed, before the authority to construct or operate the road shall be complete.

Section six of the bill now before me relates to existing railroad companies, and confers upon them the benefits of its provisions in these terms:

'Any existing railroad company, organized under and pursuant to the laws of this State, may extend its road and construct branches therefrom through, and construct and operate a railroad upon any street, avenue, road or highway upon condition that the consent of the local authorities having the control of and the consent of the owners of one-half in value of the property bounded on that portion of any existing street, avenue, road or highway, upon which said railroad is to be constructed, *have heretofore been* or shall hereafter be first obtained, and with like effect as though such company was organized under this act to construct and operate such railroad extensions and branches. And every such company shall possess all the rights and privileges conferred by this act, and be subject to, and comply with, all the provisions of this act. And any such railroad company or corporation which has partially constructed a railroad on any street, avenue or highway may complete and operate the same in any street, avenue or highway in respect to which the consent of property owners and local authorities, as required by the constitution and herein provided, *has been* or shall be hereafter first obtained.'

This permits any existing railroad company to construct and operate a road, or to complete and operate any such road, which is partially constructed, upon any street, avenue, road or highway within the limits of the State, and bases the compliance with the constitutional requirements upon consents which may have been obtained within an unlimited time prior to the actual occupancy of the streets, avenues and highways for railroad purposes, and which consents may be directly opposed to the wishes and desires of those who are the owners and occupants of the lands bounding on said streets, avenues and highways, at the time they are so appropriated.

Section seven of the bill presents some curious features, in the following language:

'No new or additional railroad tracks shall be constructed or allowed to be constructed, maintained or operated by any railroad corporation under the provisions of this act, in that portion of any of the streets, avenues or highways of any city, town or village where railroad tracks have been heretofore constructed and are now laid, except that additional tracks for a distance not exceeding one thousand feet may be laid in that portion of any such street, avenue, road or highway, as to which consent of local authority and property owners required by the Constitution, *have been heretofore obtained;* nor shall any railroad tracks be constructed, maintained or operated, except for said one thousand feet as aforesaid, upon that portion of any street, avenue, road or highway where they are now authorized to be constructed, by an act of the Legislature or as to construction of which the consent of the local authorities and of the owners of one-half in value of the property bounded on that portion of any street, avenue, road or highway upon which such tracks have been or are proposed to be constructed, has been heretofore obtained, excepting by the corporation to which such authority or consent has heretofore been granted or given.'

This seems to forbid the laying of additional tracks in any part of the streets where tracks already exist, except for a distance not exceeding one thousand feet, and then only in case consents *have been heretofore obtained;* and it is not certain that the consents obtained at a very remote period in the past, to lay one track, will not be invoked to confer the exclusive right to construct an additional track for the distance of one thousand feet.

This section, as I understand it, also prohibits, except as to the said one thousand feet, the construction and maintenance of railroad tracks in any part of a street, avenue, road or highway, wherein authority has been given to so construct or maintain, either by an act of the Legislature, or by virtue of the consent of property owners and local authorities *heretofore obtained,* unless the said road shall be constructed, maintained and operated by the corporation which has heretofore received such consents or authority.

The effect of this would seem to be, to limit the right to construct or maintain certain railroads in the streets to such corporations as have heretofore been authorized by prior consents or act of the Legislature, to the exclusion of such corporations as should hereafter obtain the consents of present property owners and local authorities.

I have not overlooked the fact that the sixth and seventh sections of this bill speak of railroad companies and railroads, while the previous sections deal with street railroads and companies. I suppose, however, it will be claimed, if occasion requires, that the railroads mentioned in sections six and seven are street railroads, and the companies spoken of, such as may construct and maintain street railroads. Otherwise they have no place in a law entitled "An act to provide for the construction, maintenance and operation of street railroads in cities, towns and villages." Moreover, the consents of owners and local authorities, "as required by the Constitution," are referred to in both sections. It appears entirely proper, in the consideration of this bill, to treat the corporations mentioned in these particular sections, as street railroad companies and the roads therein referred to as street railroads.

In any event, if it is proposed to act under the Constitution, there should honestly and fairly be accorded to the people, the protection which the Constitution intended.[*]

I think no one can read the peculiar provisions of this bill, without being convinced that its design is more to further private and corporate schemes, than to furnish the citizens of the State street railroad facilities, under the spirit and letter of the Constitution, and within the limits therein fixed for the benefit of the people."

June 1.

**Memorandum filed with Senate bill, chap. 490, entitled "An act to provide new reservoirs, dams and a new aqueduct, with the appurtenances thereto, for the purpose of supplying the city of New York with an increased supply of pure and wholesome water."**

Approved.

"I have delayed action on this bill in deference to the wishes of residents of the city of New York who desired to be heard upon the measure; and after listening to much discussion on the subject, I am very clear in the opinion that I ought to approve the bill.

That the city of New York should have a greater supply of water, there are few, I think, have the hardihood to dispute. An examination of the present condition of affairs also discloses the danger that even the present inadequate supply may at any time be interrupted or suspended. These considerations force the contemplation of a contingency fraught with discomforts, deprivation and peril to more than a million inhabitants of the State. To temporize with such a question, or to hesitate in the face of such a danger, savors of a recklessness almost criminal.

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[*] Const. 1846, art. 3, § 18, added 1874.

The bill before me, so far as I am able to discern, is a carefully drawn plan to remedy the evil, and supply this pressing need of the city of New York.

The principal objection urged against this bill is that the designation of commissioners in the bill itself by the Legislature is unconstitutional, undemocratic and a violation of the doctrine of home rule.

I think the bill is constitutional,[t] and while I am not willing to be committed to the assertion that the best manner of selecting commissioners was determined upon by the Legislature, I am unwilling to be responsible for the delay of this work, because another plan was not adopted.

It is hinted, rather than alleged, that the persons named as commissioners are not such as to give assurance of the speedy, efficient and honest prosecution of the work, and that there is reason to suspect that a political job is concealed within the provisions of this bill.

Such innuendo is easily indulged in, and when not connected with official responsibility may be harmless. But I have no idea that any opponents of the bill would sincerely ask me to defeat this legislation on such grounds.

I believe this bill furnishes the means of relief to the people of the city of New York, and protection from threatened danger. If it shall appear that the work is not in good hands, I shall be surprised and disappointed. And it is confidently expected that in a common need, all opposition to the details of the project will be displaced by a cordial co-operation with those bearing the immediate responsibility of its consummation."

June 1.

**Veto of the following items in the supply bill, chapter 491:**

"'For the payment of the expenses for cartage of Senate and Assembly documents to and from the post-office in Albany, during the session of eighteen hundred and eighty-three, to be paid to the parties who rendered the services, the sum of nine hundred dollars, being five hundred dollars for carrying Assembly documents, and four hundred dollars for carrying Senate documents.'

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[t] Const. 1846, art. 10, § 2. The act was sustained in New York v. Wright (1890), 34 N. Y. S. R. 904; Re Gilroy (1898), 32 App. Div. 216.

This item is objected to, and not approved, for the reason that the compensation named is clearly disproportionate to the value of the services rendered. The appropriation for this purpose in 1875, was two hundred dollars, and while the service rendered is now no greater than then, the compensation has gradually increased from year to year, until it has reached the sum here proposed. This seems to be entirely unjustifiable.

'For the law library formerly in possession of Chief Judge Church, and the law library formerly in possession of Chief Judge Folger, for the payment of books already purchased by the State, and books required for the libraries, the sum of five hundred dollars each, to be paid on bills certified by the judge having such library in charge, and on checks or drafts certified to be correct by the chief judge of said court.'

This item is objected to, and not approved, for the reason that it does not appear that the libraries for which the tax is proposed are for the use of the public; and furthermore, the purchase of books for which no appropriation has been made was a violation of law. Ample provision has already been made in the regular way for the support of the public libraries owned by the State.

That portion of the appropriation for the Commissioners of Fisheries which reads as follows:

* * * 'For rebuilding the salmon-trout hatching-house, at Caledonia, one thousand dollars; for maintenance of the new hatching establishment at Cold Spring, Long Island, three thousand dollars, and for maintenance of the hatching establishment at Palenville, Greene county, one thousand dollars.'

These several items are objected to, and not approved. for the reason that the sum of fifteen thousand dollars appropriated for the maintenance of the State Fisheries, should be sufficient to meet all necessary expenses of that branch of the public service.

'For Messrs. Eidlitz, Richardson & Company, architects of the Capitol building, for advances made by them for repairs of the ceiling of the Assembly Chamber, done upon the consent of the Capitol Commissioners, during the summer of eighteen hundred and eighty-two, the sum of three thousand one hundred and fifty-nine dollars and fifty-five cents.'

This item is objected to and not approved.

According to the report of the New Capitol Commissioners made to the Legislature, the commission gave its consent that the architects might make what repairs to the Assembly Chamber ceiling they deemed proper, at their own expense, and that the State should not be made liable for the expenditure.

'For supplying the New Capitol with water from eighteen hundred and seventy-nine to November, eighteen hundred and eighty-two, to be paid for out of the maintenance fund of the Capitol, the sum of five thousand nine hundred and ninety-six dollars and seventy-two cents.'

This item is objected to, and not approved, for the reason that if any liability exists on the part of the State, the claim is clearly one that should be submitted to the State Board of Claims.

'For deficiency in appropriations for postage, expenses of committees, compensation of witnesses, legislative manuals, Croswell's Manual, Clerk's Manual, indexing the bills, journals and documents of the Senate and Assembly, and other contingent expenses of the Legislature, and for pay of messengers, eighteen thousand five hundred dollars, or so much thereof as may be necessary, to be paid, in case of expenses of committees on the certificates of the chairmen of such committees, and in case of services for either house of the Legislature on the certificate of the clerk of such house, subject to the audit of the Comptroller.'

This item is objected to, and not approved.

The ordinary annual appropriation for compensation and mileage of members and officers of the Legislature is three hundred and forty thousand dollars. In addition to this, the Legislature has already appropriated thirty-three thousand dollars for contingent expenses, an amount certainly sufficient to meet all proper expenditures of the class covered by the foregoing item.

I have obtained from the Comptroller a statement of the items which go to make up the eighteen thousand five hundred dollars provided for in the item under consideration. While some of the claims are, perhaps, proper, the great bulk of them are for expenditures in plain violation of law; the amounts named are, in most instances, largely in excess of the value of the services rendered; and they could not have received legislative sanction had they been enumerated in the bill, several of them having been the subjects of previous vetoes when standing alone.

If this item should be approved, it would establish a very dangerous precedent and furnish a way of expending the public money for purposes which could not stand the test of scrutiny.

'For the actual and necessary traveling and incidental expenses of the agent of the Comptroller to examine the accounts of auctioneers, one hundred and fifty dollars, or so much thereof as may be necessary.'

This item is objected to, and not approved. If this office is to be continued at all, the salary now allowed the agent is ample to cover all necessary traveling expenses.

'For the Comptroller, for payment of the services, disbursements and expenses of counsel employed by the late

Attorney-General Fairchild, to defend the late Auditor of the Canal Department in a suit brought in the Supreme Court against him as such auditor on the relation of Orrin W. Sage, the sum of one thousand eight hundred and six dollars and ten cents, or so much thereof as may be necessary.'

This item is objected to, and not approved, for the reason that if any liability exists on the part of the State, the claim should be submitted to the State Board of Claims.

'For the Comptroller, for payment of the services of counsel employed by the late Attorney-General on the part of the State, in the Albany County Court, in the suit of the People against Francis E. Rowley, the sum of forty-two dollars, or so much thereof as may be necessary.'

This item is objected to, and not approved, for the reason stated for the disapproval of the last named item.

'For the Comptroller, for payment of counsel to assist the committee on cities of the Senate in the investigation of the Department of Public Works of the city of New York, pursuant to resolution of the Senate, passed May sixteenth, eighteen hundred and eighty-two, two thousand dollars, or so much thereof as may be necessary.'

This item is objected to, and not approved, because no reason exists why the people of the State should be called upon to pay the expenses of investigating a local department in the city of New York.

'For the Comptroller, for the payment of counsel to assist the committee on villages of the Senate, in the investigation of the methods employed by the trustees of the town of Gravesend, in the management of common lands, pursuant to resolution of the Senate, passed May thirty-first, eighteen hundred and eighty-two, one thousand five hundred dollars, or so much thereof as may be necessary.'

This item is objected to, and not approved, for the reason that no authority existed for the employment of counsel by this committee.

'For the Comptroller, for payment of services of counsel to assist the committee on insurance of the Senate of eighteen hundred and eighty-two, in the investigation of the affairs of William J. Best, as receiver of the National Trust Company, pursuant to resolution of the Senate adopted February twenty-eight, eighteen hundred and eighty-two, the sum of two thousand dollars, or so much thereof as may be necessary.'

This item is objected to, and not approved, for the reason that no authority existed for the employment of counsel by the committee.

'To the Clerk of the Assembly, one hundred dollars, to pay for extra services in the wrapping department.'

This item is objected to, and not approved, for the reason that the number of officers and employes of the Legislature is fixed by law, and if any necessity exists for the employment of additional help, provision is made for the payment of the same from the contingent fund of the clerk.

'For the services and expenses of the person designated by the joint library committee of the Senate, in pursuance of resolution of the Senate, passed June second, eighteen hundred and eighty-two, to arrange and classify the statutes, documents, digests and other books comprising the library of the Senate, the sum of one thousand dollars.'

This item is objected to, and not approved, for the reason that in my judgment the appropriation named is an excessive one for the services rendered, and the claim, if any exists, is one which can with propriety be submitted to the State Board of Claims.

'For the State entomologist, for the necessary expenses of his office, two hundred dollars, to be paid on vouchers to be approved by the Comptroller.'

This item is objected to, and not approved, for the reason that the sum annually appropriated for the State Entomologist is all that the State should be called on to pay for that office.

'For the superintendent of weights and measures, for salary, for two years, one thousand dollars.'

This item is objected to, and not approved, for the reason that I am advised that no services have been rendered during the time mentioned, and that the office is of no practical value to the people.

'For William J. McDonald, for services rendered and to be rendered under the direction of the clerk of the Senate, the necessity for which was occasioned by the last illness and death of the journal clerk of the Senate, five hundred dollars.'

This item is objected to, and not approved, for the reason that the law declares that no additional officers or employes shall be elected or appointed by the Senate or Assembly.

The vacancy caused by the death of the journal clerk of the Senate was filled by the appointment of another person, who has been paid in full, and the clerk of the Senate is prohibited by law from the employment of additional officers.

'For the New York State Dairymen's Association, one thousand dollars, for the purpose of extending dairy knowledge and sciences, and to disseminate the same among the people of this State, the necessary vouchers of the expenditure to be furnished to the Comptroller.'

This item is objected to, and not approved, for the reason that the purpose is not a proper one for State appropriation.

'For boring an experimental well to test the question of the existence of salt in place at or near the Onondaga Salt Springs Reservation, to be expended under the direction of the superintendent of the Onondaga Salt Springs, the sum of ten thousand dollars, or so much thereof as may be necessary. This appropriation shall be paid from the general fund out of any money arising from the duties on salt not otherwise appropriated.'

This item is objected to, and not approved, for the reason that the expenditure at this time of public money for such a purpose is entirely unjustifiable and improper.

'For repairs to the State dam across the Genesee river, at or near Mount Morris, in the county of Livingston, to be expended by and under the direction of the Superintendent of Public Works, one thousand dollars; and this appropriation shall release the State from all further claims for repairs and work upon the dam across the Genesee river.'

This item is objected to, and not approved.

The State has already expended for this object a large sum of money. It is doubtful if any obligation rests on the State to do this work, and in any event, a sufficient sum has been appropriated for that purpose.

'For digging a ditch from the culvert under the Erie canal, in Wayne county, near the southern boundary thereof, for draining stagnant water into the channel of the old canal, the sum of five hundred dollars, or so much thereof as may be necessary, to be expended under the direction of the Superintendent of Public Works, and payable out of any funds appropriated for the abatement of nuisances.'

This item is objected to, and not approved, for the reason that it does not satisfactorily appear that this is work which should be undertaken by the State.

'For building a bridge over Clear creek on the Cattaraugus Indian reservation in Erie county, in lieu of a bridge heretofore erected by the State, and the approaches thereto, the sum of three thousand dollars, or so much thereof as may be necessary; and to perfect, repair and complete the approaches to the iron bridge heretofore erected by the State over the same creek on the said reservation, the sum of three hundred dollars; each of these appropriations shall be expended under the direction of the Superintendent of Public Works.'

This item is objected to, and not approved.

This appropriation is prohibited by section eighteen, of article three of the Constitution.

'For a new school-house on the Onondaga Indian reservation, five hundred dollars, or so much thereof as may be necessary, to be expended under the direction of the Superintendent of Public Instruction.'

This item is objected to, and not approved, for the reason that I am not satisfied that in the present relations between the State and the Indians this is a proper object for the appropriation of public money.

'For a new school-house on the Allegany Indian reservation, five hundred dollars, or so much thereof as may be necessary, to be expended under the direction of the Superintendent of Public Instruction.'

This item is objected to, and not approved, for the reasons above stated.

'For repairing the bridge and the approaches thereto over the Onondaga creek, on the Onondaga Indian reservation, one thousand dollars, which shall be expended under the direction of the commissioner of highways of the town of Onondaga, who shall receive three dollars per day for the same, not to exceed thirty dollars.'

This item is objected to, and not approved. No reason exists why the general laws relating to highways should not be observed in this case.

'For the construction of a highway across the St. Regis Indian reservation, the sum of two hundred and fifty dollars, or so much thereof as may be necessary, and William Gillis and Samuel Barlow are hereby appointed commissioners to disburse the same.'

This item is objected to, and not approved, for the reasons above stated.

'For Mrs. Catharine Hogan, widow of Patrick Hogan of Albany, and the three children of said Patrick Hogan, share and share alike, as a gratuity in full for all claims for damages for the loss by death of the said Patrick Hogan, who fell through an opening of the elevator, April twenty-fifth, eighteen hundred and seventy-nine, while employed on the New Capitol, and who was instantly killed, the sum of one thousand dollars.'

'For Thomas McAvoy, as a gratuity, in full for all claims for damages, for the permanent injury to his leg caused by the falling of a stone, weighing seven tons, upon him, while working on the New Capitol, on the twenty-eighth day of December, eighteen hundred and eighty-two, five hundred dollars.'

'For Carl Meissner, of Battery G, Seventh Division, National Guard, State of New York, as a gratuity, he being permanently disabled for life by the premature discharge of a cannon while on duty with his battery at Elmira, New York, on the thirteenth day of May, eighteen hundred and seventy-nine, one thousand dollars.'

'For Thomas J. Lawrence, corporal, Company F, Twenty-second Regiment, National Guard, as a gratuity, who was disabled for life while on duty, as required by law, in rifle practice, one thousand dollars.'

'For Michael O'Keef, as a gratuity in full for all claim for damages for the permanent injury to his left eye, caused by a splinter of steel flying from the drill of a workman near to himself, while working on the New Capitol, on the first day of July, eighteen hundred and seventy-nine, five hundred dollars.'

'For Bennett A. Humo, as a gratuity in full for all claim for damages for the permanent injury to his right eye, resulting in blindness, caused by a splinter from the face of a hatchet he was using in opening an iron-bound cask, in the service of the State, at the Hudson River State

Hospital, on the twenty-sixth day of March, eighteen hundred and seventy-seven, five hundred dollars.'

'For Stephen Taylor, as a gratuity for all claim for damages for the loss of the fingers of his right hand, cut off by a circular saw, September fifteenth, eighteen hundred and eighty-two, while he was at work on the New Capitol, one hundred and twenty-five dollars.'

'For J. C. Young, as a gratuity in full for all claim for damages for injury to his limbs and spine, caused by the giving away of trestle work on the seventeenth day of May, eighteen hundred and eighty-two, while he was at work on the New Capitol, five hundred dollars.'

These several items are objected to, and not approved, for the following reasons:

They are all declared to be gratuities. This implies that the sums of money specified in the several items are purely donations, and that they are in no sense obligations against the State. Many of the cases thus provided for, involve considerations which strongly appeal to our pity and sympathy; but my conception of public duty leads me to the conviction that the people pay taxes for their benefit and protection, and that this forced contribution of the public funds is not justified except upon that theory. Public officials having the money of the people in their keeping, are solemnly charged with the duty of expending the same with a due regard to business principles, for the substantial good of the citizen and for the public needs.

This positively excludes the appropriation of the same for gratuities, resting solely on motives of charity and benevolence.

If a legitimate demand against the State is involved in any of these instances, a Court of Claims has been provided, in which it may be heard and passed upon, thus affording ample remedy to the citizen seeking redress from the State.

That portion of the item of appropriation for the New York State Lunatic Asylum which reads as follows:

'Any portion of any amount designated in this item for any purpose, remaining unexpended after the accomplishment of such purpose, may be used for any other purpose designated in this item.'

This item is objected to, and not approved, for the reason that the appropriations should be confined to the purposes for which they are granted.[u] Such a provision would lead to uncertainty, and a perversion of the intention of the Legislature.

That portion of the appropriation for the Binghamton Asylum for the Chronic Insane which reads as follows:

'For the purchase of ten cows, five hundred dollars; for farm and garden utensils, five hundred dollars; for wagons and harness, three hundred and five dollars; for fencing, one thousand dollars; for farm, barn and sheds, four thousand dollars; for apple and pear trees, two hundred dollars; for furnishing buildings, two thousand five hundred dollars; for general repairs, fifteen hundred dollars; for painting trestle over railroad and highway, for steam pipe, two hundred and fifty dollars; for carpenters, plumbing and steam fitting tools, tools for engineer at water-works, and blacksmith tools, five hundred dollars; for laundry machinery, four hundred and seventy-five dollars * * * and for maintenance, ten thousand dollars. Any portion of any amount designated in this item for any purpose, remaining unexpended after the accomplishment of such purpose, may be used for any other purpose designated in this item.'

These several items are objected to, and not approved, for the reason that the appropriation already made, together with the revenues of the asylum from other sources, should be sufficient to meet all necessary demands of this character.

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[u] Const. 1846, art. 7, § 8

For reasons previously stated, the item authorizing the expenditure of money appropriated for a specified purpose for other objects, is disapproved.

That portion of the appropriation for the Buffalo Asylum for Insane, which reads as follows:

* * * 'To reimburse maintenance expended for stock on farm, nine hundred dollars; * * * for storm windows for wards and administration buildings, and for cistern for storage of water to provide against failure of city supply, eight hundred dollars; * * * for additional furniture for wards and administration building, four thousand dollars; for mortuary rooms, one thousand dollars. * * * Any portion of any amount designated in this item for any purpose, remaining unexpended after the accomplishment of such purpose, may be used for any other purpose designated in this item.'

These several items are objected to, and not approved, for the reason that I believe that an appropriation for the purposes named at the present time is unnecessary.

That portion of the appropriation for the State Homœopathic Asylum at Middletown, which reads as follows:

'For tile floor in basement of main building, one thousand five hundred dollars; * * * for medical library and surgical appliances, five hundred dollars; for gymnasium and work-shop, one thousand dollars; for officers' salaries, two thousand dollars, and for furniture for new wards, two thousand dollars.'

These several items are objected to, and not approved, for the reason that the expenditures are of such a character that they do not appear to be necessary. Provision has already been made in the appropriation bill for the payment of officers' salaries.

'For the New York Asylum for Idiots, for furniture for present farmhouse, one thousand two hundred dollars; for farm stock and tools, one thousand two hundred dollars;

for barns, sheds and shops, two thousand six hundred dollars; and for new cottages for sixty adult idiots, with furniture for the same, five thousand dollars.

These items are objected to, and not approved, for the reason that twenty-five hundred dollars was appropriated in the last supply bill for repairs to farm buildings, and fifty-three thousand five hundred dollars has been this year appropriated for the general purposes of the institution. This should make the expenditure of the sums here objected to, unnecessary at this time.

That part of the appropriation for the State Asylum for Insane Criminals, at Auburn, which reads as follows:

* * * 'For additional steam pipes, radiators, cooking apparatus and labor connecting the same, two thousand five hundred dollars; for fire protection and connecting the same, one thousand two hundred dollars; and for enlarging and furnishing chapel, two thousand five hundred dollars.'

These several items are objected to, and not approved.

The sum of thirty thousand dollars has already been appropriated this year for the support, maintenance and ordinary repairs of this institution. It is to be hoped that, with the exercise of proper economy, this amount, together with that portion of this item approved, will be sufficient to meet all necessary expenses of the asylum.

'For the support and maintenance of juvenile delinquents at the Catholic Protectory, twenty thousand dollars.'

This item is objected to, and not approved.

By chapter 448 of the laws of 1863, a corporation was created named "The Society for the Protection of Destitute Roman Catholic Children in the City of New York."

The name of this corporation was changed by act of the Legislature in the year 1871, to "The New York Catholic Protectory."

The appropriation in the item above mentioned is 'for the support and maintenance of juvenile delinquents at the Catholic Protectory.'

Without inquiry as to the effect of the misnomer of the corporation as it appears in the appropriation, I think it should not be approved for other reasons.

If it were not for an opinion given by a former Attorney-General of this State, I should have great doubt as to the validity of this appropriation under that section of the Constitution which provides as follows:

'Neither the credit nor the money of the State shall be given or loaned to or in aid of any association, corporation or private undertaking. This section shall not, however, prevent the Legislature from making such provision for the education and support of the blind, the deaf and dumb and juvenile delinquents, as to it may seem proper, nor shall it apply to any fund or property now held by the State for educational purposes.'[v]

The only provisions of the charter of this institution under which it can be claimed to be a place for the maintenance of juvenile delinquents, are those which allow it to take and receive 'children between seven and fourteen years of age who may be committed to the care of such corporation, as idle, truant, vicious or homeless children, by order of any magistrate in the city of New York, empowered by law to make committal of children for any such cause,' and also 'children of the like age, who may be transferred at the option of the Commissioners of Public Charities and Correction of the city of New York, to such corporation.'

The name of this institution implies that only Roman Catholic children are there provided for. If this be so, that fact furnishes a good reason why public funds should not be contributed to its support. A violation of this principle in this case would tend to subject the State treasury to demands on behalf of all classes of sectarian institutions which a due care for the money of the State and a just economy could not concede, and which would yet have a justification in precedent.

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[v] Const. 1846, art. 8, § 10, am. 1874.

It will be seen, too, that the delinquents received at this institution are committed to its care by the authorities of the city of New York.

Thus it appears to be local in its purposes and operation, which affords, it seems to me, an additional reason why it should not be aided by the State.

I am informed that the municipality of New York pays a stated and reasonable compensation for the support and maintenance of such juvenile delinquents as are committed to this Protectory. If this be true, even the plea of want and necessity cannot be urged to justify this appropriation.

'For Western House of Refuge, for replacing the steam heating-apparatus, seven thousand five hundred dollars.'

This item is objected to, and not approved.

The sum of seventy thousand dollars has been appropriated in the regular way this year for this institution, an amount which should be sufficient to cover all necessary expenditures.

'For Mrs. Lydia Mullin, widow of Joseph Mullin, deceased, late a justice of the Supreme Court, whose term of office was abridged pursuant to the provision of section thirteen of article six of the Constitution, and who had served as such justice ten years, for the residue of the annual compensation as such retired justice, for the year ending on the thirty-first day of December, eighteen hundred and eighty-two, the sum of four thousand dollars, or so much thereof as may be necessary, payable out of any moneys in the treasury heretofore appropriated for such compensation.'[18]

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[18] See 1880, note 20, *ante*, p. 449, showing an appropriation to the widow of the late Chief Judge Church of the Court of Appeals.

'For Mrs. Mary T. Creney, widow of the late Col. James Creney, who at the time of his death, on the second day of March, eighteen hundred and eighty-two, was assistant Commissary-General of the State, as a gratuity, in full for all claim for compensation for services to the State, one thousand dollars.'

'For Mrs. Catharine D. Pierson, widow of William W. Pierson, late journal clerk of the Senate, as a gratuity, in lieu of the balance of his salary which he would have earned had he lived to the end of the session, eight hundred dollars.'

'For Mrs. Delia Weatherwax, widow of the late James H. Weatherwax, who was a State Assessor at the time of his death, which occurred on the first day of January, eighteen hundred and eighty-three, as a gratuity, in lieu of the residue of the annual salary of such assessor, up to and including the twenty-fourth day of March, eighteen hundred and eighty-three, the sum of five hundred and seventy-seven dollars and seventy-five cents, payable out of any moneys heretofore appropriated for such salary.'

These several items are objected to, and not approved, for reasons stated in the memorandum of reasons given for the disapproval of gratuities to Mrs. Catherine Hogan and others.

'For Hon. Leman Hotchkiss, for legal and other expenses incurred by him in the matter of the contested election for member of Assembly from the second Assembly district of Wayne county, for the year eighteen hundred and eighty-three, the sum of two thousand and three hundred dollars.'

'For Hon. Richard A. Derrick, for legal and other expenses incurred by him in the matter of the contested election for member of Assembly from the second Assembly district of Rensselaer county, for the year eighteen hundred and eighty-three, the sum of fifteen hundred dollars.'

'For Hon. David Lindsay, for legal and other expenses incurred by him in the matter of the contested election for member of Assembly from the eighth Assembly district of Kings county, for the year eighteen hundred and eighty-three, the sum of fifteen hundred dollars.'

'For Hon. Thomas J. Sheridan, for legal and other expenses incurred by him in the matter of the contested election for member of Assembly from the fifth Assembly district of Kings county, for the year eighteen hundred and eighty-three, the sum of one thousand dollars.'

'For Hon. Thales S. Bliss, for legal and other expenses incurred by him in the matter of the contested election for member of Assembly from the thirteenth Assembly district of the county of New York, for the year eighteen hundred and eighty-three, the sum of fifteen hundred dollars.'

These several items are objected to, and not approved.

Until the year 1875 there was no prohibition against the payment, from the funds of the State, of the counsel fees and the other expenses of both parties in case of a contest regarding seats in the Legislature, and appropriations were very frequently made to reimburse or compensate the unsuccessful as well as the successful party. But in the year mentioned a law was passed prohibiting such payments, except to the party who should be declared entitled to the seat. I am of the opinion that the payment of counsel fees and expenses in either case should be discontinued.

By the Constitution of the State each branch of the Legislature is made the judge of the elections, returns and qualifications of its own members.[w]

So far as the office of Senator or Member of Assembly is merely one of honor, dignity or emolument, it concerns the person seeking to be recognized as such, and should be secured and defended like any other right.

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[w] Const. 1846, art. 3, § 10.

But so far as it is important that the people should be represented by those who have actually been chosen, and so far as the dignity and legal constitution of the body is involved, it is a matter of public interest and importance.

This latter phase of the question is committed for determination to the body in which the seat is claimed. Such body is authorized to appoint a committee who shall collect the testimony bearing upon the question. This committee is naturally composed of such members as are well able to examine the subject; witnesses are brought before them at the expense of the State, and if thought necessary, counsel may be employed at like expense, to aid them in their investigations.

This committee should, of course, be entirely unprejudiced, seeking only to determine between the contesting parties the exact truth, touching the office and the seat which is the subject of controversy.

With provision made for securing the attendance of witnesses, and the services of counsel to aid them if necessary, they seem to be well equipped for protecting the interests of the people so far as they are in question.

Additional counsel and other expenses not required by them and not absolutely necessary to enable them to arrive at an intelligent and satisfactory conclusion, should be charged to the private interests involved, and on principle should not be borne by the State.

The items here objected to amount to $7,800, and it is perfectly plain that the allowance of such appropriations, based, as I believe, on wrong principles, opens the door to great and increasing abuses.

'For securing additional religious instruction to convicts in the several State prisons, fifteen hundred dollars, to be expended under the direction of the Superintendent of State prisons.'

This item is objected to, and not approved.

Ample provision has already been made in the appropriation bill for the maintenance of all branches of the prison service.

'For books for the library of Clinton prison, three hundred dollars.'

This item is objected to, and not approved, for the reason above stated.

'For repair of the State road, leading through State lands from Clinton prison to Ellenburgh and the Saranac river, the sum of two thousand dollars, to be expended under the direction of the Superintendent of State prisons.'

This item is objected to, and not approved, for the reason that it does not appear to be work which the State should be obliged to do.

'For laying sidewalks and paving gutters in front of State prison lands in the village of Sing Sing, one thousand dollars, to be expended under the direction of the agent and warden of Sing Sing prison and on the approval of the Superintendent of State prisons.'

This item is objected to, and not approved.

Abundant provision has already been made for the maintenance and care of the prison property, and for all legitimate and necessary expenditures.

'For the trustees of the State library, for the purchase of thirty copies of "The Public Service of the State of New York," published by J. R. Osgood & Co., for presentation to foreign national libraries and societies, the sum of nine thousand dollars, or so much thereof as may be necessary, payable by the Treasurer on the warrant of the Comptroller, on the certificate of the Secretary of the Regents of the University that such copies have been duly contracted for by said trustees and delivered to them.'

This item is objected to, and not approved.

It provides for the purchase of a quantity of books at a cost of three hundred dollars per copy. The purchase of books so expensive as these is an unjustifiable use of the public money, and if it were desirable to send such works abroad, the libraries for which they are intended should be named.

'For the office of the railroad commissioners, for salary of a clerk to index and prepare for ready reference railroad maps required by law to be placed on file in their office, and to assist in preparing the annual railroad report, the sum of one thousand two hundred dollars, to be refunded to the treasury of the State by the several corporations owning and operating railroads in this State in such proportion as is prescribed in section thirteen of chapter three hundred and fifty-three of the laws of eighteen hundred and eighty-two.'

This item is objected to, and not approved.

The law creating the railroad commission limits the expense of the commission to fifty thousand dollars per annum. That sum has already been appropriated.

'For the railroad commissioners, for printing and binding in cloth, for distribution as heretofore, such number of copies of the reports on railroads as may be required in addition to such copies thereof as may be printed as a legislative document, and in addition to the five hundred copies thereof provided in section eleven of chapter three hundred and fifty-three of the laws of eighteen hundred and eighty-two, eight thousand dollars, or so much thereof as may be necessary, to be refunded to the treasury of the State by the several corporations owning and operating railroads in this State, in such proportion as is prescribed in section thirteen of said chapter.'

This item is objected to, and not approved, for the reasons above stated.

'For supplying the railroad commissioners with copies of railroad maps on file in the office of the State Engineer and Surveyor, to be prepared under the direction of the

State Engineer and Surveyor, the compensation therefor to be fixed by him and the Comptroller, not in excess of the amount herein appropriated, the sum of two thousand dollars, or so much thereof as may be necessary, to be refunded to the treasury of the State by the several corporations owning and operating railroads in this State, in such proportion as is prescribed in section thirteen of chapter three hundred and fifty-three of the laws of eighteen hundred and eighty-two. It shall be the duty of the State Engineer and Surveyor to furnish to the board of railroad commissioners copies of all railroad maps hereafter filed in the office of the State Engineer and Surveyor.'

This item is objected to, and not approved, for the reasons first above stated.

'For clerk hire, for services in the preparation of the annual report on railroads for the year eighteen hundred and eighty-one, three hundred and twenty-five dollars, payable on the certificate of the State Engineer and Surveyor, and to be refunded to the treasury by the several railroad corporations of this State in proportion to their respective gross receipts pursuant to chapter five hundred and twenty-six of the laws of eighteen hundred and fifty-five.'

This item is objected to, and not approved, for the reason that abundant provision is annually made for clerk hire in the office of the State Engineer and Surveyor to perform all duties pertaining to the office, including the preparation of the annual report. If any person not connected with the office was in the employ of the State while preparing the annual report of the State Engineer, his services constituted a private claim against the State, which, under the Constitution, cannot be audited by the Legislature.[x]

'To the trustees of the State library, to enable them to purchase the original correspondence and other papers of Daniel D. Tompkins, Governor of the State of New York

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[x] Const. 1846, art. 3, § 19, added 1874.

(from eighteen hundred and seven to eighteen hundred and seventeen) and vice-president of the United States (from eighteen hundred and seventeen to eighteen hundred and twenty-five), and to include all the correspondence known as the Tompkins papers, the sum of five thousand dollars.'

This item is objected to, and not approved, on the ground that while the possession of these papers on the part of the State may be very desirable, the benefit to be derived therefrom hardly seems to justify such a large expenditure of public funds.

'For the commissioner in lunacy, for clerical, stenographic and other necessary work in visiting the institutions where lunatics are confined, three hundred dollars, or so much thereof as may be necessary.'

This item is objected to, and not approved, for the reason that the sum of one thousand dollars, heretofore appropriated for the incidental expenses of this officer, should be sufficient to meet all proper expenditures of this character.

'For the State Superintendent of Public Instruction to enable him in connection with the American Museum of Natural History, in Central Park in the city of New York, to establish a department for giving the most complete instruction illustrated by the collections of said museum to the teachers of the common schools of said city, and through them to their pupils, on human and comparative anatomy and physiology and zoology, and other subjects upon which the board of education of said city may require that oral instruction shall be given, the sum of twelve thousand dollars, to be paid by the treasurer, on the warrant of the Comptroller and approval of the State Superintendent of Public Instruction, from funds raised in said city for educational purposes.'

This item is objected to, and not approved.

With the ample provision made by the State for the public instruction no good reason exists why it should be asked to assume the expense of this new departure.

'For the State Board of Health, to prevent the adulteration of food and drugs, and the sale of adulterated food and drugs, under chapter four hundred and seven of the laws of eighteen hundred and eighty-one, the sum of ten thousand dollars.'

This item is objected to, and not approved.

The sum of twenty thousand dollars has already been appropriated for the general purposes of the State Board of Health. So far as offenses under the law are concerned, they can be prosecuted by the proper authorities of the respective counties.

'For the prevention of the manufacture, sale and use of dangerous explosive illuminating oils, chapter two hundred and ninety-two of the laws of eighteen hundred and eighty-two, the sum of three thousand five hundred dollars.'

This item is objected to, and not approved, for the reasons above stated.

'For the payment of a canal certificate given by a late Canal Commissioner, addressed to the Comptroller December fourteenth, eighteen hundred and seventy-six, for removing obstructions from the outlet of Cayuga lake and the channel of Seneca river, between Cross lake and Montezuma, five hundred and forty-two dollars and forty-eight cents, and for interest thereon, one hundred and ninety-five dollars and twenty-five cents, or so much thereof as may be necessary.'

This item is objected to, and not approved.

If this claim is a valid one, it should be submitted to the State Board of Claims. It is supposed to be based upon work done in excess of an appropriation.

'For fees and disbursements of counsel in defending Theodoric R. Westbrook, Justice of the Supreme Court, before the committee on judiciary of the Assembly in the investigation of charges against him, in eighteen hundred and eighty-two, two thousand three hundred dollars, payable on the certificate of the chairman of said committee.'

This item is objected to, and not approved.

On the 12th day of April, 1882, a resolution was adopted by the Assembly, reciting that charges had been, from time to time, made by the public press against Justice T. R. Westbrook, on account of his official conduct in relation to suits brought against the Manhattan railway, and other cases, and which empowered and directed the judiciary committee of the Assembly, to investigate his conduct in relation to such suits, and report at the earliest day practicable.

The judiciary committee thus required to investigate this matter comprised some of the best legal talent in the Assembly, and was abundantly able to conduct any inquiry necessary, and to properly elicit and weigh all evidence touching the subject. Moreover counsel was especially employed by order of the Assembly to assist the committee.

It must be borne in mind that this committee was merely to investigate the conduct of Justice Westbrook and report. It was an inquiry set on foot by the Assembly for its own information. There was no provision for any notice to be given the party whose conduct was to be the subject of investigation, and it was entirely competent and not improper for the committee, if it so desired, to conduct its inquiry in secret and with closed doors.

So far as appears from the proceedings of the committee, no notice was formally given to the party whose conduct was to be examined; but it seems that his counsel was permitted to be present and take part in the examination of witnesses. There is no pretense that he appeared there, otherwise than at the request and upon the retainer of a private client, and at the sufferance of the committee.

The nature of the report of a majority of the committee has nothing to do with the question.

No person was on trial, no one was called on to defend himself (if that should make a difference), and the committee stood in no need of the assistance of counsel in addition to that provided by the Assembly.

It is difficult to discover how a legal or equitable claim against the State arises from this transaction:

'For P. J. Joachimsen, as attorney for H. W. O. Edye and William Volckens, in the action hereinafter named, the sum of seven hundred and twenty-five dollars and forty-five cents, being the amount in full payment of the principal of a judgment for costs against the people of this State in favor of said Edye and Volckens, in an action commenced in the name of the people, in the Common Pleas court in the city of New York, against the said Edye and Volckens, which judgment was docketed in the clerk's office of New York county, on the twenty-second day of June, eighteen hundred and eighty-two; and the further sum of forty-three dollars and fifty-two cents, or so much thereof as may be necessary, for interest on said judgment. The Comptroller shall pay the above sums to the above-named attorney, out of any moneys heretofore appropriated for the Commissioners of Emigration, not otherwise expended, upon the filing by said attorney with the Comptroller, of a satisfaction of said judgment, certified to be in due form by the Attorney-General.'

This item is objected to, and not approved.

Five hundred dollars of this amount consists of an extra allowance in addition to the ordinary costs in such cases. There appears to be nothing in the nature of the case or the labor performed to justify this allowance.

'For the State Normal School at Albany, for repairs, scientific apparatus and other expenses, two thousand dollars.'

This item is objected to, and not approved.

The annual appropriation for the maintenance of this school is sufficient to meet all necessary expenses for apparatus. In view of the fact that an appropriation has been made for the construction of a new building, no repairs should be undertaken on the old structure.

'For payment of the salaries of the several teachers in the normal school at Cortland, who were removed from office by the Superintendent of Public Instruction and restored by order of the Court of Appeals, in such amounts as shall be certified by the Superintendent of Public Instruction to be due to each in accordance with the decision of such court in ordering such restoration, the sum of ten thousand six hundred and eighty dollars and seventy-one cents, or so much thereof as may be necessary.'

This item is objected to, and not approved, for the reason that the State has paid the teachers actually performing the services between the time of the removal of the teachers mentioned in this item and their restoration. The State ought not to pay twice for the same services.

'For the Adjutant-General, for the payment of local assessments on the State armory at Albany, two hundred and ninety-six dollars and thirty-three cents; for the payment of local assessments on the State arsenal at Buffalo, two hundred and fifty-seven dollars and eighty-six cents; and for repairing the street and sidewalk fronting the State armory at Oswego, two hundred and fifty dollars, or so much thereof as may be necessary.'

'For the city of Rochester, for assessment on the New York State arsenal in said city, for constructing MacAdam roadway with stone gutters and sidewalk on Jackson street, from South St. Paul street to Monroe avenue, in eighteen hundred and seventy-eight, four hundred and thirty-eight dollars and fifty-eight cents; for assessment on said arsenal constructing MacAdam roadway with stone gutters and curb stones in South street, from Court street to Griffith street, in eighteen hundred and eighty-two, nine hundred and thirty-two dollars and seventy-one cents; and for assessment on the House of Refuge in said city, for constructing extension of sewer from Lake avenue to Deep Hollow creek, in eighteen hundred and eighty, three hundred and sixty-six dollars and thirty cents.'

'For the city of Syracuse, for assessment on the land of the Salt Springs office in said city, for paving Salina street in front of said office, in eighteen hundred and seventy-six, three hundred and eighty-two dollars and seventy-two cents.'

These several items are objected to, and not approved.

Items of this character, including some herein named, have been repeatedly vetoed by my predecessors on the ground that the State ought not to be chargeable with municipal taxation. This reason appears to be an entirely valid one against the allowance of these items.

'For the erection of an addition to the military storehouse in the city of Binghamton, Broome county, to be used as company rooms by the National Guard in said city and county, the sum of ten thousand dollars, to be expended under the direction of the Adjutant-General, the Inspector-General and the Chief of Ordnance of the State; but no part of said sum shall be expended by them except upon a contract for the completion of such addition within the limits of this appropriation, nor until the above-named officials shall be satisfied that an indefeasible title to the site for such storehouse has been vested in the people of this State, and that such site affords ample room for the erection of such addition without impairing the usefulness and purpose of such store-house.'

This item is objected to, and not approved.

No new building for military purposes at Binghamton should be begun until the building now in course of erection is completed, and the need of any such additional building in the future is extremely questionable.

'For Benjamin F. Brady, for engrossing and framing memorials of the proceedings of the Senate and Assembly relative to the death of Honorable Webster Wagner, late Senator from the Eighteenth Senatorial District of this State, the sum of eight hundred dollars, payable on the certificate of the committee of the Legislature having charge of the preparation of the memorial.'

This item is objected to, and not approved.

It has been once vetoed upon the indisputable ground that the amount named is unreasonable and excessive. While the object may not be an unworthy one, it is to be hoped that if the claim is presented for the third time it will bear a nearer relation to the value of the services actually rendered.

'For the Commissioners of Quarantine, to pay for work, labor and services rendered and materials supplied by Henry P. Kirkham, in the repair of the hospital ship Illinois and the steamer N. K. Hopkins, in eighteen hundred and seventy-nine, fifteen hundred and twenty dollars and forty-one cents.'[19]

This item is objected to, and not approved, for the reason that the claim is clearly one which the Legislature has not the power under the Constitution to audit or allow, and on this ground has heretofore failed to receive the Executive sanction.[y]

'For the Board of Commissioners of Quarantine to carry out the contract made by them with John A. Appleton, for the purchase of real estate in the town of Southfield, Richmond county, dated November twenty-sixth, eighteen hundred and seventy-two, and approved by the commissioners of the land office, December eighteen, eighteen hundred and seventy-two, the sum of one thousand five hundred dollars, or so much thereof as may be necessary, to grade the hill thereon near New York avenue, to a level with the adjoining land owned by St. John's Episcopal church.'

This item is objected to, and not approved.

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[19] As to the Kirkham claim, see 1882, note 37, *ante*, p. 792.

[y] Const. 1846, art. 3, § 19, added 1874.

An appropriation for this object was vetoed in 1879, it appearing, upon examination, that among other things the work was unnecessary.

After the lapse of so much time, it seems entirely reasonable to adopt the result of previous investigation."

June 2.

**Veto of the following item in Assembly bill, chapter 495, making appropriations for the canals:**

The item contained in section three which reads as follows:

'Taxes for eighteen hundred and eighty-one, twenty-nine thousand four hundred and ninety-one dollars and eighty-two cents.'

This item is objected to, and not approved, for the reason that the sum named, being the surplus of a tax levied in 1881, was appropriated for another object by chapter 373 of the laws of the present year.

June 4. The executive records do not show any formal omnibus veto, but according to the register of bills received and disposed of by the Governor, the following were left without action thereon at the close of the thirty-day period:

A. 282. An Act to amend chapter 209 of the laws of 1873, "An act entitled 'An act to provide for the election of the superintendent of the poor of Fulton county,' passed April 12, 1873.

A. 788. An Act to amend chapter 71 of the laws of 1846, entitled "An act to repeal chapter 19 of the laws of 1845, and to reduce the duty upon salt."

A. 659. An Act to authorize the covering of the village brook in the village of Saratoga Spa, from a point near the north side of Lake Avenue where the covering now ends to Circular Street, and authorize the filling in and grading of a portion of Spring Avenue in said village.

A. 662. An Act to authorize and empower the state board of claims to hear, audit and determine the claims of Chemung county for moneys expended in the trials of two convicts for murder committed during their imprisonment in the State Reformatory in Elmira and to make awards therefor.

A. 376. An Act to amend chapter 340 of the laws of 1881, entitled "An act to authorize the construction of a bridge over the Erie canal at Brockport, Monroe County."

A. 763. An Act to repeal chapter 351 of the laws of 1866, entitled "An act to incorporate the village of White Plains as amended by chapter 518 of the laws of 1867 and by chapter 693 of the laws of 1870, and by chapter 409 of the laws of 1873, and by chapter 179 of the laws of 1878," so far as the same relates to that portion of said village lying within the limits of the town of Greenburgh.

A. 713. An Act concerning the grounds, buildings and property of religious corporations, the custody, protection and preservation of the same, and the powers of trustees in relation thereto.

A. 750. An Act to amend certain sections of the code of civil procedure. (Joining of issue and appeals.)

A. 765. An Act to change the corporate name of the Garfield Memorial Home to the Brooklyn Home for Consumptives.

A. 650. An Act to provide for the payment of the salary of the late Ransom Balcom, a justice of the Supreme Court.

S. 221. An Act to pension teachers, tutors, assistant professors, or full professors in the public schools and the college of the city of New York.

A. 342. An Act to exempt the real estate of the Ebenezer Baptist Church situate in the city of New York from certain assessments.

A. 264. An Act to authorize the commissioners of the land office to donate and authorize a conveyance of certain lands on the salt springs reservation to the Onondaga Historical Association.

A. 620. An Act in relation to sewers and drainage in the city of Brooklyn.

A. 674. An Act to promote and encourage the replanting of forests.

S. 128. An Act to authorize and empower the state board of claims to hear, audit and determine the claims of Cayuga county for moneys expended in trials of convicts for crimes committed during their imprisonment in Auburn prison and to make award therefor.

S. 211. An Act to amend the code of civil procedure. (Stipulated notice of appeals.)

A. 746. An Act appropriating a certain amount of money to repave, regrade and otherwise improve certain streets and avenues in the city of Brooklyn.

A. 724. An Act to legalize the election of commissioners of highways in the town of Easton in the county of Washington.

A. 362. An Act to amend section 892 of the Code of Criminal Procedure.

A. 837. An Act to reappropriate certain moneys in the treasury of the State heretofore appropriated for the construction and improvement of the road from Piseco Lake to Clofflins Tannery in the county of Hamilton and to amend chapter 118 of the laws of 1873.

A. 617. An Act to repeal chapter 62 of the laws of 1874, entitled "An act to provide for the election or appointment of a police justice in the village of Northville, Fulton county, and for other purposes in relation to the excise moneys in said village."

A. 860. An Act granting the consent of the State of New York to the acquisition by the United States of certain lands for the purpose of the erection of government buildings in the city of Brooklyn and ceding jurisdiction over the same.

A. 703. An Act in relation to incorporated villages.

A. 519. An Act to amend an act entitled "An act to condense and amend several acts incorporating or relating to the village of Skaneateles, passed April 16, 1857," and the various acts amending the same.

A. 560. An Act to amend section 7 of chapter 450 of the laws of 1881, entitled "An act to secure registration of plumbers and the supervision of plumbing and drainage in the cities of New York and Brooklyn."

A. 622. An Act relative to common schools in the city of New York.

A. 420. An Act to amend chapter 212 of the laws of 1878, entitled "An act in relation to the Weedsport Union School."

A. 321. An Act to amend chapter 392 of the laws of 1880, entitled "An act relative to janitors in district courts in the city of New York, passed May 26, 1880."

A. 532. An Act in relation to judicial sales of land in the county of Richmond.

A. 377. An Act to provide for lengthening lock number 46 of the Erie canal, and making an appropriation therefor.

S. 336. An Act to amend chapter 513 of the laws of 1870, entitled "An act to revise the charter of the city of Buffalo and the acts amendatory thereof."

S. 320. An Act to authorize the Buffalo Cemetery Association to acquire additional land, and to erect a building for office purposes.

S. 388. An Act to provide for the payment to John Foley of his salary as supervisor of the county of New York.

S. 298. An Act appropriating money for the erection of an armory in the city of New York.

S. 449. An Act appointing a commissioner to manage certain forest lands of the state in the county of St. Lawrence and defining his powers and duties.

S. 242. An Act to provide for reducing deposits in insolvent savings banks or institutions for savings.

S. 147. An Act to amend section 690 of chapter 410 of the laws of 1882, entitled "An act to consolidate and to declare the local and special laws affecting public interests in the city of New York."

S. 375. An Act to amend chapter 370 of the laws of 1875, entitled "An act to amend and consolidate the several acts relative to the city of Elmira."

S. —. An Act conferring additional powers on the Board of Education of Union Free School district number one of the town of Hoosick.

S. —. An Act to amend the charter of the city of Buffalo.

S. 318. An Act to authorize companies of other states organized on the mutual plan for the purpose of insuring tobacco growers against loss or damage to their growing crops by hail to transact business in this State.

S. 51. An Act to amend the code .of civil procedure. (Sec. 1798, action by attorney general.)

S. 377. An Act to provide for the assessment of telegraph, telephone and electric light lines.

A. 815. An Act to amend chapter 170 of the laws of 1866, entitled "An act to incorporate the village of Montezuma."

A. 509. An Act declaring Bonaparte creek in Lewis county a public highway.

A. 634. An Act to amend and supplement an act entitled "An act to provide for the promotion of public health and for draining and reclaiming overflowed and wet lands adjoining the Indian River in the counties of Jefferson and St. Lawrence," passed April 3, 1865.

A. 466. An Act to provide for the compilation and publication of the journals and records of the military expedition against the Six Nations in the year 1779 under the conduct of Major General John Sullivan, and for other purposes.

A. 787. An Act to amend an act entitled "An act to incorporate the Liberty Normal Institute," passed April 12, 1848, chapter 296, laws of 1848.

A. 82. An Act to amend section 287 of chapter 410 of laws of 1882.

A. 789. An Act to authorize the sale of certain coarse salt lands, the removal of vats therefrom, and the purchase of other lands in lieu thereof.

A. 383. An Act setting apart and renewing Pier 37, East river in the port of New York for certain purposes.

A. 485. An Act in relation to lanes and alleys in the city of Albany.

A. 818. An Act to authorize religious corporations to take and hold title to burial plots in trust for the owners or proprietors thereof, and to care for the same.

A. 492. An Act to incorporate the New York State Trust Company.

A. 300. An Act to amend an act entitled "An Act to amend and consolidate the several acts relating to the village of Hornellsville," passed April 9, 1867.

A. 618. An Act to amend an act entitled "An act to consolidate the several school districts within the village of Owego," passed April 23, 1864.

A. 350. An Act further to amend, revise and consolidate the laws in relation to the village of Seneca Falls, passed April 20, 1874.

A. 615. An Act to amend chapter 111, laws of 1851, entitled "An act to amend the several acts incorporating the village of Owego."

A. 657. An Act to facilitate the removal of stable refuse from New York city.

A. 859. An Act to release certain real estate in the town of Stamford and certain lands in the county of Clinton (to Catherine Wakeman).

A. 624. An Act to amend chapter 468, laws of 1872, entitled "An act to amend the several acts in relation to the charter of the city of Hudson."

A. 668. An Act to amend chapter 502, laws of 1879, entitled

"An act governing the sale of drugs, medicines and poisons in the county of Kings."

S. 397. An Act to authorize the board of audit to hear and audit the claims of Lewis Rider.

S. 447. An Act to incorporate the village of Sea Cliff in the county of Queens.

S. —. An Act in relation to sewers and drainage in the city of Brooklyn.

S. 403. An Act to amend section 1, chapter 477, laws 1881, entitled "An act to provide for the taxation of banks and moneyed capital engaged in banking," etc.

S. —. An Act to amend chapter 776, laws 1870, entitled "An act amending the act incorporating the village of Mount Vernon.

S. 327. An Act to amend an act entitled "An act to amend chapter 335, laws of 1873, entitled 'An act to reorganize the local government of the city of New York.'"

A. 566. An Act to authorize the corporate authorities of the village of Sandy Hill to regulate the speed of railroad steam cars running through the streets of said village, and to provide penalties for the violation of such regulations or ordinances.

A. 858. An Act to annex to the city of Brooklyn the town of New Lots and to provide for its control and government in said city.

A. 504. An Act to amend chapter 349 of the laws of 1872, entitled "An act to authorize the appointment of commissioners to fix the grade and improve sidewalks, and open and improve streets in the town of New Lots, Kings county.

A. 558. An Act to amend chapter 129 of the laws of 1873, entitled "An Act to authorize David S. S. Sammis to establish and continue a ferry across Fire island or Great South bay from the village of Babylon to Fire Island beach in the county of Suffolk."

A. 797. An Act to create a police pension fund for disabled and retired policemen of the police department of the city of

New York, and to provide for its maintenance and administration.

A. 191. An Act to provide a greater number of cells in the State prison at Sing Sing and to regulate the disposition and confinement of convicts in State prisons.

A. 689. An Act to amend chapter 349 of the laws of 1877, entitled "An act to provide for the payment of bonds issued by municipal corporations under the provisions of chapter 907, laws of 1869, entitled 'An act to amend an act entitled An act to authorize the formation of railroad corporations and to regulate the same,' passed April 28, 1850, so as to permit municipal corporations to aid in the construction of railroads, and the acts amendatory thereof."

A. 340. An Act to authorize the superintendent of public works to prevent the further damages to adjacent lands by the filling up of Mill creek in the city of Schenectady.

A. 714. An Act to authorize the Highland Trans-Hudson Railroad Company to construct and operate a bridge across the Hudson river.

A. 528. An Act to legalize and make valid the incorporation of certain scientific, medical and literary colleges and universities, and to amend chapter 367 of the laws of 1882, entitled "An act to restrict the formation of corporations under chapter 319 of the laws of 1848, entitled 'An act to provide for the incorporation of benevolent charitable, scientific and missionary societies, and the acts amendatory thereof, and to legalize the incorporation of certain societies organized thereunder, and to regulate the same.'"

A. 806. An Act providing for the better collection of county taxes in the towns of the county of Erie and for the sale by the treasurer of Erie county of lands in said towns for unpaid taxes.

A. 517. An Act to authorize the laying of an iron pipe under the Erie canal and Miller's basin in the city of Utica.

S. 129. An Act to authorize the State board of audit to hear and determine certain claims against the State. (Thomas Lawlor & Quarantine Imp.)

**S. 260. An Act to amend chapter 534, laws of 1879, entitled "An act for the preservation of moose, wild deer, birds, fish and other game."**

**S. 193. An Act to change the name of the "Rochester and Charlotte Turnpike road company," and to regulate the management of said company.**

**A. 648. An Act to amend the Code of Civil Procedure. (Sec. 1131.)**

**A. 516. An Act to amend an act entitled "An act to consolidate into one act and to declare the special and local laws affecting public interests in the city of New York," passed July 1st, 1882.**

**S. 235. An Act to amend chapter 448, laws of 1877, relative to school districts in town of Mentz, Cayuga county.**

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## 1884. JANUARY 1. LEGISLATURE, ONE HUNDRED AND SEVENTH SESSION.

## GROVER CLEVELAND, Governor.

## ANNUAL MESSAGE.

STATE OF NEW YORK:

EXECUTIVE CHAMBER,
ALBANY, *January* 1, 1884.

TO THE LEGISLATURE.—In transmitting a statement of the condition of the State, and recommending such matters for legislative action as are deemed expedient, I believe it to be entirely proper at the outset, to direct attention to the fact that the growth and progress of the State in every direction, and the needs of the people, call for patient and intelligent action on the part of their representatives in the Legislature. Every one who has assumed any share of responsibility in this branch of the government should enter upon the discharge of his duties, fully appreciating his trust, and with an unwavering determination to faithfully serve the State.

It is suggested that frequent and unnecessary recesses, taken during the session of the Legislature, not only result in a great waste of time, but by interruption of thought and effort, tend to loose, careless and ill-advised legislative action.

Another evil which has a most pernicious influence on legislation, is the introduction and consideration of bills purely local in their character, affecting only special interests, and which ought not upon any pretext to be permitted to incumber the statutes of the State. Every consideration of expediency, as well as the language and evident intent of the Constitution,[a] dictate the exclusion of such matters from legislative consideration. The powers of Boards of Supervisors and other local authorities have been enlarged, for the express purpose of permitting them to deal intelligently and properly with such subjects. But notwithstanding this, bills are introduced authorizing the building and repairing of bridges and highways, the erection of engine houses and soldiers' monuments, the establishment of libraries, the regulation or purchase of cemeteries, and other things of a like nature. In many cases no better excuse exists for the presentation of such bills than the dignity and force which is supposed to be gained for their objects by legal enactment, the saving of expense and trouble to those interested in their purposes, and the local notoriety and popularity sought by the legislators having them in charge. Their consideration retards the business of the session and occupies time which should be devoted to better purposes. And this is not the worst result that may follow in their train. Such measures, there is ground to suspect, are frequently made the means of securing, by a promise of aid in their passage, the votes of those who introduce them, in favor of other and more vicious legislation.

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[a] **Const. 1846, art. 3, § 18, added 1874; §§ 22, 23, am. 1874; art. 8, § 1.**

The crowding of a large amount of business into the closing hours of the session, gives opportunity in the haste and confusion which ensue, for the passage of bad and improvident laws, perhaps to the exclusion of measures of importance and value.

The postponement of legislation until the last of the session also results in leaving a large number of bills in the hands of the Governor at the time of final adjournment. By the terms of the Constitution such bills cannot become laws unless they are approved by the executive within thirty days after the adjournment;[b] there is no opportunity for the Legislature to review the disapproval of the Governor, and he has the absolute power to determine which shall become laws and which shall fail. This arbitrary executive control of legislation should be guarded against by submitting the same to the Governor, as far as possible, in time to permit the Legislature to review his action thereon if unfavorable.

At the time of the adjournment of the last session, three hundred and fifty-seven bills had been signed by the Governor, and two hundred and forty-nine remained subject to his action.

## FINANCES.

The total debt of the State on the thirtieth of September last, after deducting the amount in the Sinking Fund to meet the same, was $5,978,301.81, being a reduction of debt during the year of $407,054.49. This debt, with the exception of a balance of $3,000 of the bounty debt which remains unclaimed, and $122,694.87, the amount necessary to yield at six per cent. interest the sum required to pay the annuities to Indians, consists of the stock of the State issued for canal construction, bearing six per cent. interest, and redeemable in the years 1887, 1891, 1892, and 1893.

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[b] Const. 1846, art. 4, § 9, am. 1874.

The statement of the condition of the financial department of the State government, for the details of which you are referred to the annual report of the Comptroller, shows sufficient funds in the treasury to meet all obligations, and an available surplus at the beginning of the present fiscal year of $1,249,567.97. This surplus arises from the veto by the Governor of items of appropriation after the adoption of the tax levy, the excess of receipts from various sources over estimates, and unexpended balances of appropriations.

The amount received by the Treasurer from taxes on corporations, during the year, was $1,935,179.31, being an increase over the preceding year of $395,495.04; but of this amount $351,183.75 was on account of taxes due in 1880, and paid under recent decisions of the courts.

In consequence of the increase in the valuation of the taxable property of the State, the tax rate of three and one-quarter mills on each dollar, fixed by the last Legislature, will raise $9,334,836.31, an amount considerably in excess of the actual needs of government. The causes which contributed to slightly increase the rate of taxation for the present year, were the adoption of the policy of reserving $1,000,000 of the surplus then in the treasury to meet current expenses, and the adjustment of the canal finances to the system under which these works are supported by a direct tax upon the people, which required that there should be raised in the present fiscal year, for the Canal Debt Sinking Fund, an amount that otherwise would have been distributed over two years.

Basing the estimates for the support of government on the cost of the present year, it is evident that a generous appropriation can be made for continuing work on the New Capitol, and that by reason of the increased valuation and the lessening of the canal tax, an extraordinary reduction in the tax rate can still be made for the coming year. In fact, the observance of due care in the appropriation of public funds by the present Legislature, and the exercise of such economy as sound public policy dictates, will reduce the tax levy for the coming year to a point which has not been reached in twenty-five years, and effect a reduction of more than three millions of dollars from the amount raised by direct taxation last year.

## TAXATION.

The subject of taxation still remains a vexed question; and the injustice and discrimination apparent in our laws on this subject, as well as the methods of their execution, call loudly for relief. There is no object so worthy of the care and attention of the Legislature as this. Strict economy in the management of State affairs, by their agents, should furnish the people a good government at the least possible cost. This is common honesty. But to see to it that this cost is fairly and justly distributed, and the burden equally borne by those who have no peaceful redress if the State is unjust, is the best attribute of sovereignty and the highest duty to the citizen. The recognition of this duty characterizes a beneficent government; but its repudiation marks the oppression of tyrannical power. The taxpayer need not wait till his burden is greater than he can bear for just cause of complaint. However small his tax, he may reasonably protest, if it represents more than his share of the public burden, and the State neglects all effort to apply a remedy.

The tendency of our prosperity is in the direction of the accumulation of immense fortunes, largely invested in personal property; and yet its aggregate valuation, as fixed for the purpose of taxation, is constantly decreased, while that of real estate is increased. For the year 1882, the valuation of personal property subject to taxation was determined at $351,021,189, and real estate at $2,432,661,379. In 1883 the assessed valuation of personal property was fixed at $315,039,085, and real estate $2,557,218,240.

The present law permits in the case of personal property, the indebtedness of its possessor to be deducted from its value, and allows no such deduction in favor of real estate, though it be represented by a mortgage which is a specific lien upon such real estate. Personal property, in need more than any other of the protection of the government, when discovered, escapes taxation to the extent of its owner's indebtedness, though such indebtedness is based upon the ordinary credit in the transaction of business or is fictitious, and manufactured for the temporary purpose of evading taxation. But real property, the existence of which cannot be concealed, is, in contemplation of the law, taxed according to its full valuation, though the incumbrance upon it easily divests the owner of his title, though the interest and perhaps part of the principal must, as well as the tax, annually be met, and though if sold the amount due upon this lien must always be deducted from any sum agreed upon as the price of the land.

This statement does not necessarily lead to a deduction of the amount of any incumbrance upon real estate from its valuation for the purpose of taxation; but it does suggest that both real and personal property should be placed upon the same footing, by abolishing, in all cases, any deduction for debts. This amendment, with some others regulating the manner in which local assessors should perform their duties, would do much towards ridding our present system of its imperfections.

If measures more radical in their nature, having for their object the exaction of taxes which are justly due, should be deemed wise, I hope their passage will not be prevented under the specious pretext that the means proposed are inquisitorial and contrary to the spirit of our institutions. The object is to preserve the honor of the State in its dealings with the citizen, to prevent the rich, by shirking taxation, from adding to the burdens of the poor, and to relieve the landholder from unjust discrimination. The spirit of our institutions dictates that this endeavor should be pursued, in a manner free from all demagogism, but with the determination to use every necessary means to accomplish the result.

## THE CANALS.

An analysis of the expenditures by the Superintendent of Public Works, shows that of the aggregate cost of repairs and maintenance of the canals for the year ending September 30, 1883, the sum of $240,535.54 was expended during the four months from October 1, 1882, to February 1, 1883, and $349,319.36 for the remainder of the year under the administration of the present Superintendent. This latter period comprised all but two months of the season of navigation. For the fiscal year, which begins October 1, 1884, provision must be made by tax to meet the cost of maintenance, which is estimated at $650,000, in addition to the required contribution of $450,000 to the canal debt sinking fund, and $500,310 for interest on the canal debt.[1] This total of $1,600,310 can be met by a tax of fifty-seven one hundredths of a mill, the canal tax for the current year being one and forty-seven thousandths mills.

Navigation during the year has been uninterrupted from the opening until the close of the canals, with but two exceptions of a few hours duration; the standard depth of water has been fully maintained, and the general good navigable condition of the canals is evidenced by the amount of tonnage transported, and the regularity and speed with which boats have made their trips.

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[1] The items of $450,000 for the canal debt sinking fund, and $500,310 for interest on the canal debt were provided for by chapter 250, passed May 5.

Provision for maintenance was made by chapter 365, passed May 24, which imposed a tax of 23/100ths of a mill.

The exhibit of the canal business for the season just closed, in my judgment, fully justifies the policy adopted by the people of relieving this commerce of the burden of tolls. It was unfortunate that in the first year of free canals, the one when most attention would be given the subject and most interest manifested in its operation, the season of navigation should be very materially shortened by a late opening and early closing on account of the weather. But notwithstanding the loss of thirty-three days, as compared with the year previous, or about one-seventh of the average period of navigation, the tonnage for the year was 5,775,631 tons, an increase over last year of 324,350 tons. Comparing the tonnage for the two seasons on the basis that they were of the same duration, the excess in favor of this year is 823,371 tons.

Remarkable proof of the increased commerce attracted to these water-ways by the abolition of tolls is found in the fact that the shipments of grain from Buffalo by canal this year aggregated 42,350,916 bushels against 29,439,688 bushels last year; and the statistics which will be transmitted by the Superintendent of Public Works, will exhibit like increase in the other freights which comprise the great bulk of the canal traffic.

These figures assure those interested in canal navigation, that the liberal policy adopted by the State will make reasonably certain a continuance of employment and opportunities for the capital and labor of our citizens. They also give promise to the people, who have assumed the expense of maintaining the canals, of a full return, in the benefits which must accrue from securing to our State a traffic of such proportions as to add materially to its business and wealth.

Pursuant to a policy which for a number of years seems to have prevailed, no improvements have been made upon the canals, and expenditures have, in the main, been limited to the cost of superintendence, and such repairs as were absolutely necessary to preserve navigation. That the banks, prism and structures are now in sufficiently good condition for present purposes I have no doubt. But I agree with the Superintendent of Public Works, that it is not wise to rely wholly upon a continuance of the good fortune which has so long attended the canals; and without hesitation, I concur in his proposition to take measures to inaugurate a system of such constant and gradual repairs as ordinary prudence demands.

## Public Education.

The Superintendent of Public Instruction furnishes the following statement concerning the public schools for the year ending September 30, 1883:

| | |
|---|---|
| Total receipts, including balance on hand October 1, 1882 | $13,206,065 14 |
| Total expenditures | 11,858,594 09 |
| Amount paid for teachers' wages | 8,265,452 83 |
| Amount paid for school houses, repairs, furniture, etc. | 1,925,671 27 |
| Estimated value of school houses and sites. | 31,011,211 00 |
| Number of teachers employed during legal term of school | 21,122 |
| Number of teachers employed during any portion of the year | 31,570 |
| Number of children attending public schools | 1,041,089 |
| Number attending normal schools | 6,270 |
| Number of volumes in school district libraries | 701,675 |
| Number of persons in the State between the ages of five and twenty-one | 1,681,500 |

There seems to have been, for a number of years, a steady decrease in the number of books contained in school district libraries. In 1860 the number reported was 1,286,536; in 1881, 707,155; in 1882, 705,812, and now 701,675. If it is proposed to continue the advantages of these libraries, it is quite evident that there should be a change in the extent and manner of their supply, or in the means of their preservation.

The Regents of the University report that there are twenty-four literary and thirteen medical colleges connected with the University of the State. Of these, two have been chartered during the past year, to wit: Canisius College, of Buffalo, and Niagara University at Suspension Bridge.

There are under the visitation of the Regents 277 academies and academical departments of Union Schools, comprising about 36,000 scholars and 1,400 teachers.

The instruction of common school teachers has been carried on during the past year in ninety-five academical institutions, in which 1,611 scholars have been trained. These classes are under the care of an inspector appointed by the Regents.

The removal of the library building has necessitated the arrangement of the State Library in temporary quarters in the New Capitol.

Arrangements for the removal of the State Museum to the State Hall as soon as it is vacated have been made. The printing of the Paleontology, allowed by the last Legislature, has been resumed by the Regents.

## BANKS.

Eight new banks of discount were organized during the year, and one failed, leaving the total number eighty-four, the condition of which on the 1st day of October, 1883, was reported as follows:

| | | Increase During the Year. |
|---|---|---|
| Resources | $160,716,393 | $38,152,933 |
| Capital | 21,761,700 | 2,956,000 |
| Surplus and profits | 11,146,418 | 1,488,716 |
| Due depositors | 113,914,963 | 31,863,983 |
| Other liabilities | 13,893,312 | 1,844,234 |

Of the increase in capital, $1,300,000 was the result of the conversion of banks from the National to the State system.

On the first day of July last, 127 savings banks reported to the Superintendent of the Banking Department, but of this number, twelve transact no business and have but a nominal existence. During the year one new savings institution was organized, and one closed after paying its depositors and creditors in full. The condition of these savings banks on the day named was as follows:

| | | Increase During the Year |
|---|---|---|
| Resources | $483,662,008 15 | $23,538,425 49 |
| Due depositors | 420,831,007 38 | 20,087,168 96 |
| Surplus on market value | 62,114,693 47 | 2,957,654 24 |
| Other liabilities | 716,307 30 | 493,602 30 |
| Number of depositors | 1,119,512 | 52,994 |

The immense financial transactions of these institutions, intended to be semi-charitable in their nature, shown in the fact that during the year the deposits received from and withdrawn by their million of depositors, aggregated $304,592,254.95, exclusive of the interest credited, calls for the exercise of the utmost care that the safeguards which surround them and which have given confidence to those who intrust their earnings to their keeping, should be jealously protected.

The reports made July first by the sixteen loan, mortgage, guaranty and indemnity companies, doing business in this State, exhibit the following conditions:

| | | Increase in Number |
|---|---|---|
| Resources | $160,137,764 04 | $20,379,229 90 |
| Capital paid in | 13,537,000 83 | 957,500 00 |
| Surplus and profits | 12,244,412 42 | 2,390,035 64 |
| Due depositors | 125,283,170 17 | 20,394,985 01 |
| Other liabilities | 9,229,350 92 | *3,207,130 45 |

Sixteen institutions for the safe-keeping and guaranteeing of personal property, with a capital aggregating $2,886,900, were under the supervision of the Banking Department on the first day of October.

In my last annual message to the Legislature I took occasion to say:

"State supervision of banks is worse than useless unless it is thorough and effective. Under the law, as it now stands, the Superintendent of the Banking Department must cause an examination to be made of these institutions only when, in his opinion, there is good reason to suspect an unsound condition or false reports. It would seem that the solvency of the banks and protection of depositors would be better assured, if one or more examinations, in each year, were made compulsory on the Department."

The evidence accumulates to prove the necessity for such an enactment as was then suggested, and which will be duly submitted for your consideration.[2]

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* Decrease.

[2] Chapter 47, passed March 22, amending the Banking Law of 1882, chapter 409, provided for an examination of banks by the Superintendent, or by an agent designated by him, but it did not require periodical examinations. An act passed in 1892, chapter 689, required the annual examination of banks and individual bankers, and a biennial examination of saving banks.

Chapter 394, L. 1905, required a semi-annual examination of banks, trust companies and individual bankers, and an annual examination of savings banks and other moneyed corporations. See *ante*, p. 823.

## INSURANCE.

The statistics furnished by the Insurance Department show that our citizens have suffered no losses during the year, by failure of any of the companies doing business under its supervision.

On the 1st day of July, 1883, there were doing business in this State 147 joint-stock fire insurance companies, with total assets of $169,983,924.56, including a net surplus of $51,978,273.33; fifteen marine insurance companies with total assets of $23,253,860.86, including a net surplus of $4,440,141.59; twenty-nine life insurance companies with total assets of $449,602,347.17, including surplus as regards policy-holders of $76,751,390.73, and seven casualty insurance companies with total assets of $3,617,413.41, and a net surplus of $1,331,038.81. There were 131 co-operative insurance associations doing business in this State January 1, 1883. Of these 119 were New York State companies and twelve were organized in other States; the number of certificates in force issued by these associations was 443,296. During the year 1882, 119,385 certificates were written and 51,381 terminated. The losses paid amounted to $7,430,856.51.

The amount of securities on deposit with the Insurance Department July 1, 1883, for the protection of policy-holders issued by the various insurance companies transacting business in this State was in the aggregate $13,488,347.68, as follows:

| | | |
|---|---|---|
| New York State life insurance companies.. | $2,662,508 | 75 |
| New York casualty insurance companies.. | 301,567 | 73 |
| New York fire insurance companies........ | 1,693,000 | 00 |
| Fire insurance companies of other States.. | 100 | 00 |
| Foreign insurance companies ............ | 8,831,171 | 20 |

Under the provisions of the law passed April 2, 1883, to regulate the formation and conduct of co-operative insurance associations, by placing them under the superintendence of the Insurance Department, thirteen of such asssociations have been incorporated, and five organized in other States have been admitted to transact business in this State. By the operation of the new law the standard of this class of insurance has been materially elevated. A number of fraudulent and mismanaged societies have been driven from business, and those honestly and prudently conducted have acquired a better place in the confidence of the community.

A remarkable saving in expense has been effected in this department during the past year under the present administration.

On the 30th day of April, 1883, there were thirty clerks employed in the department, whose annual salaries amounted in the aggregate to $48,650, together with an attorney at a salary of $4,000, while at the close of the fiscal year, September thirtieth, there were but seventeen clerks employed, at an aggregate annual expense of $28,150, and the services of the attorney had been dispensed with as unnecessary. The Superintendent feels confident of his ability to still further reduce these expenses without, in any manner, diminishing the efficiency of the department. As a result of this reduction, the fire, marine and life insurance companies, and the co-operative societies organized under the laws of this State, have been notified that no fees, taxes or dues will be imposed upon them this year by the department, the statutory fees collected from the companies of other States and countries being sufficient for its maintenance.

## NATIONAL GUARD.

The organization and efficiency of the military department of the State are in a very satisfactory condition. The National Guard consists of four divisions, eight brigades, seven battalions of artillery, fifteen regiments, one battalion and forty separate companies. The whole number of officers and enlisted men on the 30th day of September, 1883, was 11,568, notwithstanding that under the provisions of the new Military Code all regimental bands, aggregating 554 members, have been dropped from the rolls, and many enlisted men, physically incapable of doing military duty, have been discharged from the service.

During the last year the Forty-second Separate Company, located at Syracuse, has been formally disbanded, and one new company has been organized in Elmira.

The latest reports show that recruiting is steadily progressing. If the existing organizations should be filled to the maximum strength allowed, the aggregate of officers and men would exceed 18,000, while the whole number permitted by the Code is limited to 15,000. For this reason, and in view of the fact that the funds at the disposal of the department are necessary for present wants, many applications for the formation of new companies and the readmission of organizations heretofore disbanded, have been refused.

The Military Code passed by the last Legislature prescribed service uniforms to be furnished by the State to the National Guard. So far as they have been issued they have proved serviceable. They are neat in appearance and acceptable to the troops. But the lack of an appropriation for that purpose has rendered it impossible to furnish the new uniforms except to a few of the most needy organizations. I recommend that the present Legislature make provision to furnish this uniform to those yet unprovided for, in the belief that after the Guard is once fully equipped the expense of its maintenance in this respect will be less than under the previous system.[3]

The State Camp of Instruction inaugurated by my predecessor in 1882 seemed productive of such good results that

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[3] Chapter 305, approved May 19, 1884, appropriated $125,000 for the purchase of a service uniform for the National Guard.

I ordered a similar camp, in the summer of 1883. It was opened on the sixteenth day of June and continued to the twenty-eighth day of July. Six regiments and nine separate companies were in camp one week each. The number of the Guard thus allowed the advantage of this important feature of military instruction was 3,515, exceeding by more than one-third those in camp the previous year.

It is quite apparent that the policy which has reduced the number of the National Guard should be supplemented by every reasonable effort to make it reliable and efficient. Investigation and personal inspection have satisfied me that nothing tends more in that direction than the opportunities afforded by the Camp of Instruction.

The ground thus far occupied near Peekskill, is admirably adapted to the purpose in every respect, and considerable money of the State has already been expended in fitting it for use. It comprises about one hundred acres, and is now held by the State under a lease which expires May 1, 1885, at an annual rent of $1,000. The privilege is reserved to the State to purchase the property at any time before the expiration of the lease for the sum of $13,000. The price is regarded as reasonable, and I recommend that the purchase be made by the State, with a view of permanently establishing the Camp of Instruction as an element of military education.[4]

The last Legislature provided for the erection of an armory in each of the cities of New York, Brooklyn and Troy, and in the village of Flushing.

Some amendments to the Military Code, which has been in operation since last April, are deemed desirable, and will at the proper time be submitted for the action of the Legislature.[5]

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[4] The act of 1885, chapter 118, made provision for the purchase of a site for a camp of instruction. [See 1882, note 26, *ante*, p. 747.

[5] Several statutes passed at this session, 1884, contained amendments to the Military Code, relating for the most part to matters of detail.

## State Prisons.

From a statement made by the Superintendent of State Prisons, it appears that on the 30th day of September, 1883, there were confined in Auburn prison 882 convicts; in Sing Sing 1,462, and in Clinton 484, making a total of 2,828; being less than for a number of previous years. There were 144 inmates of the State Asylum for Insane Criminals, nine of whom were women.

The earnings and expenditures of these prisons during the last fiscal year, were as follows:

| | | |
|---|---|---|
| *Auburn Prison.* | | |
| Earnings | $125,280 30 | |
| Expenditures | 119,857 42 | |
| Surplus | | $5,422 88 |
| *Sing Sing.* | | |
| Earnings | $237,238 48 | |
| Expenditures | 183,219 73 | |
| Surplus | | 54,018 75 |
| | | $59,441 63 |
| *Clinton.* | | |
| Earnings | $44,542 80 | |
| Expenditures | 94,878 20 | |
| Deficiency | | 50,335 40 |
| Balance surplus | | $9,106 23 |

Two hundred convicts have been transferred, during the year, from Sing Sing to Auburn prison.

I learn, as the result of inquiries instituted on the subject, that on the 1st day of December, 1883, more than 15,000 men, women and children were confined in the prisons, houses of refuge, penitentiaries, reformatories, jails and protectories within the State. Of course, all of these are not convicted of crime, but the figures suggest a large convict population, the care and management of which present important and intricate questions.

Of the number above mentioned 507 were confined in the State Reformatory at Elmira, upon conviction of felonies. Such convicts are required to be between the ages of sixteen and thirty years. No term of imprisonment is fixed by the sentence, but they cannot be detained longer than the maximum time for which they might have been sent to prison. Within this limit, they may be imprisoned until discharged by the rules of the institution.

The Board of Managers may transfer "temporarily" to either of the State prisons, any inmate who, subsequent to his committal to the Reformatory, shall be shown to have been at the time of his conviction, more than thirty years of age, or to have been previously convicted of crime or any apparently incorrigible prisoner whose presence in the Reformatory appears to be seriously detrimental to the well being of the institution. If after such transfer he is not recalled by the managers, he must remain in State prison during the balance of the longest sentence that might have originally been imposed upon him. The law allowing a reduction of the time of imprisonment for good conduct is not applicable to his case.

On application to the prison at Auburn, I learn that since the Reformatory was established, and up to the 6th day of December, 1883, seventy-five persons who had originally been sent to the Reformatory were transferred, under the conditions above stated, to the Auburn State prison. Of these, fifteen have been allowed to serve in prison the longest sentence that could have been pronounced for their crime; one was discharged by order of the managers of the Reformatory; one was transferred to Clinton prison; four were transferred to the Asylum for Insane Criminals (one of whom was subsequently returned to prison); two died; one was recalled to the Reformatory, and fifty-two still remained in the prison. How many of these were sent to the State prison by the managers because, in their view, they were "apparently incorrigible prisoners, whose presence in the Reformatory appears to be seriously detrimental to the well being of the institution," is not reported; but it is safe to say that a large proportion were consigned to prison on that allegation. The prisoner thus transferred, who was sentenced to the Reformatory, in mercy, to avoid the stigma of a sentence to prison, and for purposes of reform, because he had maintained theretofore a good reputation and standing in society, may meet at the door of the prison his accomplice in the crime committed, who, having made no pretense of character or respectability, has served the sentence to prison pronounced upon him by the court. The worst and most hardened criminals, if originally sent to prison, earn, by good conduct, a considerable reduction of imprisonment, but the convict from the Reformatory has no such thing to hope or strive for. In my opinion there should be no power vested in the Board of Managers of this institution to send persons committed to their care to the State prisons; and if convicts are sentenced to the Reformatory, the courts should exercise the greatest care to be satisfied that they are promising subjects for reformatory efforts, and fix a term beyond which they cannot be confined. A release before the time thus fixed might well be offered as a reward for improvement, reform or good conduct.

The law in relation to the reduction, for good behavior, of the terms of convicts in State prison, should be made more plain and definite, and the power of the prison authorities to refuse such reduction be more exactly defined.

At the last election there was submitted to the people of the State, for the expression of their opinion thereon, a proposition to abolish contract labor from the State prisons. Quite a large majority of the votes cast upon this question were in favor of the proposition; and the present Legislature will be expected to consider the subject. It should be approached with the utmost care and deliberation. The opportunity of the workingman should not be injuriously affected by the labor of convicts in the prisons; nor, unless to avoid such a danger or other serious abuses, should the self-supporting feature of the prisons be lost and the expense of their maintenance added to the burden of the taxpayers.[6]

## CHARITABLE INSTITUTIONS.

The following information is furnished by the State Board of Charities and the Commissioner in Lunacy:

The value of the property held by the various charitable institutions on the first day of October, 1883, was $42,935,360.04, of which $35,415,555.45 was in real estate, and $7,519,804.59 in personal property.

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[6] A prison labor commission was created by chapter 12, passed February 9, to be composed of five members appointed by the Governor and Senate, to hold office until March 1, 1884, and they were required to examine the subject of contract labor in the State prisons and report not later than the 1st day of March.

A bill to amend this act, and extend the term of office of the commissioners was vetoed by the Governor on the 3d of March, 1884. The bill was passed on the 1st of March, and sent to the Governor on that day. He held that by the language of the original act the term of office of the commissioners expired on the last day of February; consequently that they were already out of office when the bill was passed, and their official terms could not have been extended even if the bill had been approved. He suggested that a new act be passed reviving the commission. [See veto message of March 3.] No new act was passed, but by chapter 21, passed March 3, the Superintendent of Prisons was prohibited from making any contract for employment of convict labor, and from extending or renewing any existing contract.

Chapter 470, approved June 4, prohibited the employment of children by contract in any house of refuge, reformatory or other correctional institution.

The receipts of all these institutions for the year ending September 30, 1883, were as follows:

| | |
|---|---|
| State institutions | $909,221 52 |
| County and city institutions | 2,363,720 42 |
| Incorporated benevolent institutions | 7,157,002 15 |
| | $10,429,944 09 |

Of this sum, $719,753.98 was derived from the State, $4,876,519.37 from cities and counties, and $1,520,571.15 from legacies and donations.

The expenditures during the year were as follows:

| | |
|---|---|
| By State institutions | $1,435,242 62 |
| By county and city institutions | 2,363,720 42 |
| By incorporated benevolent institutions | 6,492,431 04 |
| | $10,291,394 08 |

The number of insane in the various institutions on the 30th day of September, 1883, was 11,270, distributed as follows:

| | |
|---|---|
| State Lunatic Asylum at Utica | 600 |
| Hudson River State Hospital | 306 |
| State Homœopathic Asylum | 260 |
| Buffalo State Asylum | 329 |
| Willard Asylum (chronic insane) | 1,740 |
| Binghamton Asylum (chronic insane) | 412 |
| County poor-houses and asylums | 1,867 |
| City alms-houses and asylums | 5,010 |
| In private asylums | 493 |
| Asylum for Insane Criminals | 144 |
| Asylum for Insane Emigrants | 109 |
| | 11,270 |

Of this number, 5,015 were males and 6,255 females. The total given above is 827 in excess of the insane reported for the year ending September 30, 1882.

The number of State paupers under care on the 1st day of October, 1882, was 163. There were 1,426 committed during the year ending September 30, 1883. The number discharged as able to provide for themselves was 504; adopted into families 4; absconded 67; transferred to insane and other asylums 9; furnished with transportation to their homes or places where they were legally settled in other States or countries 784; died 40.

There remained on the 1st day of October, 1883, under care 189. Of these, 158 were in the State Alms-houses, twenty-eight in State Insane asylums, and three in Orphan asylums.

During the year ending September 30, 1883, sixty-nine crippled, blind, lunatic and otherwise infirm and helpless alien paupers found in the various hospitals, asylums, poor-houses and alms-houses of the State were sent to their respective homes in various countries of Europe, at an expense of $1,603.12. In every instance these persons were without friends in this country, and their infirmities and disabilities were found to have existed before they left their homes. It was evident that they were sent here with the intention on the part of those by whom they were shipped, of escaping the expense of their care and maintenance. Eighteen of these helpless paupers, of whom several were "assisted immigrants," were sent by counties and towns in other countries, sixteen by organized societies, three by guardians, and twenty-seven bv relatives and friends.

Some attention given to the system of supervision of the charitable and reformatory institutions of the State convinces me that it might be much improved.

The State Board of Charities is vested with the power of visitation and examination, and is required to report the condition of the institutions visited, which include all the charitable and correctional institutions in the State.

The State Commissioner in Lunacy is authorized and directed to examine into and report annually to the Legislature, the condition of the insane and idiotic in the State, and the management and conduct of the asylums and institutions for their care and treatment.

The boards of trustees or managers of all the charitable and correctional institutions have generally the control of their business and internal management.

The superintendents hold their positions under the boards of trustees, and are supposed to devote their attention to the care of the inmates of the institutions.

The Board of Charities is composed of most estimable men and women who receive no compensation for their services, but devote all the time to the performance of their duties that can reasonably be expected, and their labors are undeniably valuable. Their powers are advisory in their nature, and their recommendations are often unheeded.

The powers and duties of the State Commissioner in Lunacy, so far as the institutions for the insane and idiotic are concerned, are nearly identical with those of the Board of Charities; and unfortunate questions have arisen from this condition.

The visitations of the Board of Charities, as well as the Commissioner in Lunacy, are necessarily infrequent, and the information they gain of the actual management of the institutions quite general and imperfect.

The local boards of trustees gratuitously perform the duties they have assumed, and while not unfaithful, can hardly be expected to devote time very constantly to the details of management. They very naturally gain much of their information from the statements of the superintendent in charge.

A recent investigation by a committee of the managers of the Western House of Refuge, where delinquent boys and girls are sent for reform and instruction, satisfied the committee that for months the by-laws and regulations of the institution relating to the punishment of inmates had been violated; that the boys there confined had been beaten, abused and assaulted in the most outrageous manner, by the attendants and subordinates in charge, and the funds of the institution had not been sufficiently protected.

It is assumed that neither the Board of Charities nor the local board of trustees had any knowledge of these things until they were exposed by the investigation; and the superintendent testified that he was entirely ignorant of the instances of cruelty established by the testimony.

A system which permits this condition of things is evidently defective.

The time will never come when the humane sentiment of the people will approve the cruel treatment or the neglect of the unfortunate, or even criminal, inmates of these institutions; and their usefulness depends upon giving no occasion for the growth of a suspicious and unreasoning belief that their benevolent purposes are lost or perverted. That system of management is, therefore, manifestly best which most nearly satisfies the public that it is conducted with due regard to justice and forbearance.

Another and a more practical consideration is involved in this question.

The State annually appropriates from half to three-quarters of a million of dollars to the maintenance of these institutions; and those connected with the making or administration of the laws owe, as a duty to the taxpayers of the State, their best efforts to guard the expenditure of the money thus appropriated against extravagance, and insure its advantageous application to the purposes for which it is intended.

An examination of some of the expenditures of these institutions and the cost of the maintenance of their inmates, establishes the fact that their business management is seriously at fault.

A report made to the Comptroller by the agent appointed in 1878 to examine their financial affairs and business administration, contains much valuable and startling information. By this report it appears that our State institutions compare very unfavorably in the cost of their maintenance with those of other States and countries. Confined to our own State, the result of the inquiry in this respect is no less striking. There is reported quite an important variation in the prices paid for the same kind of supplies, and a great difference in the expense of supporting their inmates. The cost of provisions and supplies is given for the support of each inmate in the year 1877, in twenty different lunatic asylums, three of which are located in this State and seventeen in other States and provinces. Of the seventeen the annual cost *per capita* in six institutions was between $50 and $60; in two between $60 and $70; in seven between $70 and $80; in one $81.87, and in one $101.74. In the three New York institutions this cost is reported at $105.88, $140.78 and $157.22. It thus appears that the New York asylums are not only much more expensive than the others, but that among themselves there is a difference between the highest and lowest rate of more than fifty per cent.

The last report of the State Board of Charities contains a statement of the weekly *per capita* cost of maintaining the inmates in several of our State institutions, which shows a variation scarcely less marked.

I cannot but believe that much that is defective and expensive in the present management of these institutions is attributable to divided responsibility and consequent loose and unbusiness-like methods. I fear that too much of the time of superintendents, which should be devoted to the actual care and watch of those put in their charge, is spent in other occupations, which, though not necessarily foreign to the interests of the institutions, should not be included among their duties.

At every session of the Legislature, not only the superintendent, but delegations from the local boards of managers, appear before the committees having the subject of appropriations in charge, asking for money to maintain their institutions, which, if needed, they should receive without importunity. Appropriations are made for all manner of enlargements, repairs, alterations and improvements, many of which are disapproved after executive examination, which is unavoidably imperfect and may lead to injustice.

A suspicion may well be entertained that in the localities where these institutions are situate the privilege of furnishing the supplies and materials is granted from motives of friendliness or a desire to patronize home trade, resulting in bargains disadvantageous to the institutions and the State.

In seeking to better the condition of affairs we cannot fail to be reminded of the experience of the State in relation to prison management. During the year ending the 30th day of September, 1876, there was paid from the treasury for the maintenance of these institutions, above their earnings, the sum of $704,379.85. By an amendment to the Constitution adopted in November of that year, the superintendence, management and control of the State prisons were vested in a superintendent, who entered upon the discharge of his duties in February, 1877.[c] On the thirtieth day of September following, or in less than nine months, under the new management the deficiency of expenditure was reduced to $369,688.08. This deficiency steadily decreased until the 30th of September, 1881, when a surplus of $564.35 was reported, which has annually increased until at the close of the last year it reached $9,106.23.

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[c] Const. 1846, art. 5, § 4, am. 1876.

There seems to be no good reason why similarly favorable results cannot be obtained by the application of a like system to the control and management of the business affairs of our charitable institutions. It accords with the plan adopted where large private interests are involved; it has the advantage of concentrated responsibility; the Legislature and the Executive should, under such a system, be satisfactorily informed of the actual needs of the different institutions, and the necessary appropriations should be cheerfully made; the time of the superintendents could be devoted to their legitimate and proper duties; the detection and prevention of abuses and neglect could be reasonably exacted; a very large saving should be effected in the wholesale purchase of supplies of uniform grade, for all the institutions, and the advantages consequent upon a correct application of business methods would be secured to the people of the State.

The change suggested contemplates the employment of a fit person vested with the supervision and control of these institutions, to whom a fair salary should be paid, and who should have no other business. He should absolutely be required to devote all his time to the performance of his duties.

The attention of the Legislature is earnestly called to this subject, in the hope that a better system may be adopted, with such careful consideration of detail and the necessary change in present laws as will secure the inauguration of a plan which shall be simple, efficient and well perfected.[7]

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[7] On the 30th of April, the Assembly adopted the following resolution, which was concurred in by the Senate on the 14th of May:

"*Resolved*, That the Attorney General, the Comptroller, and the President of the State Board of Charities be and they are hereby requested to meet together and devise a plan for the reorganization of the business and financial management of all the State charitable institutions so that the funds of such institutions may be administered by the comptroller of the State, and so that

### EMIGRATION.

The Commissioners of Emigration report that the number of immigrants landed at Castle Garden from January 1st, to the 1st day of December, 1883, was 372,183, being 63,464 less than were received during the corresponding time in the previous year. They estimate the total number for the entire year at 390,000, as against 455,450 for the year 1882.

During eleven months of the present year, 4,818 immigrants were admitted to the State Emigrant Hospital and Refuge, at Ward's Island, and the number remaining on the tenth day of December was 575, of which 116 were insane.

During the time covered by the report, 27,480 immigrants have been furnished employment, and 1,273 have been returned to the places from which they came.

Of the expenditures of the Board, $168,054.04 is reported as received from the funds collected by the Treasury Department under the act of Congress directing the payment of a certain sum for each immigrant landed, and $38,202.51 was received from the State. In addition, there was expended the sum of $31,049.29 for repairs to the State property on Ward's Island, this sum being the balance of the amount appropriated for that purpose by the Legislature in 1882.

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the purchases of provisions and other supplies for the use of such institutions may be made by some central authority or purchasing agency. That said officials are hereby requested and empowered to make such other or further inquiries into the present system of management of such institutions as they may deem expedient in order to enable them to carry out the foregoing suggestion, and to enable them to make any further recommendation for the improvement of the business management and control of the State Charities. To that end the said officials are further requested to report their recommendations and conclusions to the next legislature within ten days after the meeting thereof; and if any changes in the existing laws be advised, they shall report the same by bill."

On the 13th of February, 1885, the commission sent a communication to the Assembly, suggesting that more time would be needed to make the examination required by the foregoing resolution. A concurrent resolution was thereupon adopted extending the time of the commission, and directing it to report early in the session of 1886.

At the last session of the Legislature a law was passed for the purpose of entirely reconstructing this department. Such action was in my judgment entirely justified. It was based upon grounds of economy, honesty and humanity. The new law recognizes the doctrine of concentrated responsibility by providing for the appointment by the Governor and confirmation by the Senate, of a commissioner who with the respective presidents of the German Society and Irish Emigrant Society as *ex-officio* commissioners, should constitute a Board of Immigration in place of the present unwieldy, inharmonious and badly constituted board. The law also contained other safeguards in favor of the immigrants against extortion and imposition.

The new system thus provided, failed to become operative by reason of the refusal of the last Senate to act upon the nomination of a commissioner. The speedy execution of this law is earnestly recommended.

## QUARANTINE AND HEALTH OFFICER.

The reports from the Quarantine Department and the health officer of the port of New York, show that during the past year infectious or contagious diseases have gained no foothold in the State.

The last Legislature failed to make the ordinary appropriation for the care and maintenance of the Quarantine Department. In consequence of this there exists a deficiency in that department of $8,427.50 for which an appropriation will be necessary.[8]

In July, 1881, the Senate appointed a committee " to investigate and ascertain the emoluments and to examine into the administration of the health officer of the port of

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[8] The deficiency in the appropriation for the quarantine department was supplied by chapter 8, passed February 2, 1884.

New York, with a view of making the Quarantine Department self sustaining, and framing such laws as may be in the public interest."

The committee, after making quite a thorough examination and taking a great deal of testimony, submitted a report in which they express the opinion that the gross net income of the health officer could not average less than $40,000 per annum, and might, in favorable years, reach as high as $60,000 or more, and that they were sufficient to pay all the cost of maintaining the quarantine establishment after paying the health officer a liberal salary.

The following statement is also contained in the report:

"At present the boarding fee is the only one authorized and fixed by the statute; of the other fees, some are authorized by the quarantine commissioners, like the fee for fumigation, while others are collected without any authority whatever, except custom, and their amount is altogether in the discretion of the health officer. This is the case with what is called the 'inspection fee,' and also the 'night boarding fee.' Your committee has no hesitation in saying that such a state of things ought not to exist with any officer of the State authorized to collect fees. They, therefore, recommend that all fees hereafter collected by the health officer shall be fixed by law, and that he shall be prohibited from exacting any fees not thus provided by statute. In conclusion, your committee cannot refrain from expressing the opinion that the revenues of the health officer of the port of New York are out of all proportion to the professional skill and labor required to properly fill the office. Exceeding as they do the salary of any of the State officers, the Governor included, they constitute an anomaly in the administration of the commonwealth which is uncalled for, inexcusable and ought not to be permitted to continue."

Another fact appears in the evidence taken by the committee, which is not referred to in their report. The present incumbent of the health office testified that, in the year 1880, he paid between $9,000 and $10,000 as a voluntary contribution to the party of which he was a member, for political purposes.

When, in addition to the facts above presented, the Legislature is reminded that, notwithstanding the amount so collected, appropriations are annually made from the State treasury for the support of the Quarantine Department, the need of legislation on this subject will, I hope, be recognized.

It may be that, upon consideration, the fees which are now legitimately charged for services performed in this department, will not be found unduly burdensome, though some vessels now subjected to their payment might be relieved; but all fees and charges resting in the discretion of the officer, or exacted without authority, should be definitely fixed by law or prohibited.

In my judgment the health officer should be attached to the quarantine establishment and be paid a fair salary, which, as well as the salaries of the other parties in charge of the department, and the cost of maintaining the buildings and property of the State used in connection therewith, should be met by fees and charges collected for services performed, which fees and charges should be fixed at no higher rate than is necessary to meet such expenses.

The inauguration of such a system, it is believed, would insure an efficient administration in this important department, relieve the taxpayers of the State from present burdens and subserve the interest of the commerce of the port.[9]

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[9] The Legislature adopted a concurrent resolution, recommending that Congress "establish by law such just and equitable fees for the port of New York and for all ports of entry in the United States, as a conference of the representatives of the State Boards of Health of the maritime states and of the National Board of Health may recommend, or as Congress, in its wisdom, may enact."

In 1888, by chapter 77, the salary of the health officer of New York was fixed at $10,000. Specified fees were to be collected by him and used for the

## HARBOR MASTERS.

In my last annual message the attention of the Legislature was called to the fact that the fees then collected by the harbor masters at the port of New York had been declared by the Supreme Court of the United States to be illegal[d] and that such fees were notwithstanding still collected under the guise of voluntary payments made for the services of those officers. It was also suggested that such services might be intrusted to the Department of Docks in connection with its other work, and thus the commerce of the port be relieved from any charge for the same. This suggestion was not adopted, but a law was passed allowing the Governor to appoint, by and with the advice and consent of the Senate, a captain of the port and eleven harbor masters, and abolishing those offices as they previously existed. The captain of the port, under the new law, was to receive a salary of thirty-five hundred dollars, besides certain expenses, and the harbor masters were to receive a salary of twenty-five hundred dollars each, to be paid from the State Treasury.

It was claimed that the office of harbor master was necessary, and that the Department of Docks should not be invested with their duties. Though the argument in its favor did not appear conclusive, and though the payment of the expenses of these officials by the State seemed very objectionable, the bill was approved because it seemed to be the only attainable method to relieve the State from complicity in the blackmailing and extortionate methods of the prevailing system.

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expenses of the department. Any deficiency in the expenses was to be supplied by the quarantine commissioners, and any excess was to be paid to the commissioners for the preservation and repair of quarantine property.

An act passed in 1892, chapter 486, increased the health officer's salary to $12,500, and this amount was continued in the public health law of 1893, chapter 661.

[d] See Inman S.S. Co. v. Tinker (1876), 94 U. S. 238.

An effort to execute this law failed through the refusal of the Senate to act upon the nominations made to the offices which were created. I am now entirely satisfied that the Department of Docks can well perform the duties heretofore devolved upon harbor masters without expense to the State, and with little, if any, additional cost to the city of New York.

It appears from statements made to me that this service has been assumed by this department and substantially performed under its direction, during the past season.

I recommend the repeal of the law remaining unexecuted, being chapter 357 of the Laws of 1883, and all other laws by which the office of harbor master was created or is in any manner recognized, and the transfer of the duties heretofore performed by harbor masters to the Department of Docks.

## PILOTAGE.

The fees allowed to pilots should undoubtedly be reduced. The law under which they are now collected was passed in 1865, and permitted a very large addition to previous rates on account of the great increase in living expenses. It was then distinctly understood that such increase should be allowed for only three years, and the law so provided. The operation of the statute has been extended from time to time until all limitation has disappeared. Repeated efforts have been made to have the fees reduced by law, but they still remain a danger which cannot longer be concealed, to the supremacy of the port and the prosperity of the State. Representations made to me by both the commercial interests affected and the pilots, leave in my mind not a shadow of doubt that it is the duty of the Legislature, in the interests of the State, to regulate these fees so that they will cease to be, as now, higher than in other ports in this and foreign countries. The suggestion is made by the pilots that the extortion is mitigated because the high rates are paid by foreign instead of domestic ship owners. This idea is in direct antagonism to the considerations involved in the creation and maintenance of the commerce of a State, and betrays an entire misconception of the important interests with which the occupation of a pilot is related, and upon which its existence depends. When it is found that the number of pilots remain about the same as when the fees were enlarged; that the tonnage entering the port has increased immensely; that steamships have been largely substituted for sailing vessels, and consequently the services of the pilots are more quickly and easily performed; that the reason of the increase in fees, originally intended as temporary, has failed, and that the commerce of the port needs relief, sufficient reasons are apparent for a modification of the present law on this subject.[10]

### THE RAILROAD COMMISSION.

The law passed in 1882 creating a Board of Railroad Commissioners was made operative during the last year, and the board was organized on the 1st day of February, 1883.

Since that time they have done a vast amount of work of a character which demonstrates the need and usefulness of such a department, and with results which are creditable to the zeal, fidelity and intelligence of the commissioners.

The operations of the board will not be here specifically detailed, more than to touch upon some facts deemed of general interest contained in the report of the commissioners, which will soon be laid before the Legislature.

During the eight months between the organization of the board and the 30th day of September, 1883, seventy-five complaints were preferred, all of which were fully investigated. Some of these involved a thorough examination into the financial affairs and history of large railroad corporations, while others had reference to the comfort and safety of passengers and citizens as related to the operations of the roads. Many recommendations have been made to the railroad companies, calculated to protect the people in life and limb, most of which have been cheerfully adopted.

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[10] Chapter 90, passed April 3, 1884, regulated pilotage at the port of New York.

Of the 6,500 miles of railroad in the State, all have been inspected by some member of the Board, or by a competent engineer employed for that purpose. When defects have been discovered, the company operating the road has been at once called on to remedy the same. The companies have generally evinced a desire to co-operate in every effort to secure the safety of travel.

Much attention has been given to the investigation of accidents on railroads, their causes and the means to prevent their recurrence. Every accident occurring in any part of the State has been reported promptly to the Board.

The following is the record of those killed or injured in the operation of the railroads in this State, for the eight months ending September 30, 1883:

| | Killed | Injured |
|---|---|---|
| Passengers | 34 | 118 |
| Employes | 110 | 396 |
| Other persons | 178 | 146 |
| | 322 | 660 |

As a number of the persons who were neither passengers nor employes were killed or injured at crossings, an inquiry instituted by the Board, in relation to railroad crossings, developed the following facts:

| | |
|---|---|
| Number of public traveled highways and streets crossed at grade by railroads in the State | 6,881 |
| Number of such crossings in cities and villages | 1,825 |

| | |
|---|---|
| Number of crossings where the view of approaching trains is obstructed from those traveling the highway, when within 150 feet of the crossing on either side | 1,576 |
| Number of gates at highway crossings, including thirty-six on the Long Island Railroad | 53 |
| Number of flagmen employed | 650 |
| Number of persons killed or injured at crossings during the last five years | 264 |
| Number within that time killed or injured at crossings protected by gates or flagmen | 119 |

The question of freight rates on railroads has been considered by the Board, in connection with a bill referred to them by the last Senate involving that subject, and a report will as soon as possible be submitted, which it is hoped will aid just and wise legislation regarding this question.

A number of laws and amendments to existing statutes will in due time be presented by the Board for the consideration of the Legislature. As these will be the result of intelligent reflection and inquiry, and will have relation to important interests, I trust they will receive careful attention.

The action of the Board in requiring the filing of quarterly reports by the railroad companies, exhibiting their financial condition, is a most important step in advance, and should be abundantly sustained. It would, in my opinion, be a most valuable protection to the people if other large corporations were obliged to report to some department their transactions and financial condition.

The State creates these corporations upon the theory that some proper thing of benefit can be better done by them than by private enterprise, and that the aggregation of the funds of many individuals may be thus profitably employed. They are launched upon the public with the seal of the State, in some sense upon them. They are permitted to represent the advantages they possess and the wealth sure to follow from admission to membership. In one hand is held a charter from the State, and in the other is proffered their stock.

It is a fact, singular though well established, that people will pay their money for stock in a corporation engaged in enterprises in which they would refuse to invest if in private hands.

It is a grave question whether the formation of these artificial bodies ought not to be checked or better regulated and in some way supervised.

At any rate they should always be kept well in hand, and the funds of its citizens should be protected by the State which has invited their investment. While the stockholders are the owners of the corporate property, notoriously they are oftentimes completely in the power of the directors and managers, who acquire a majority of the stock and by this means perpetuate their control, using the corporate property and franchises for their benefit and profit, regardless of the interests and rights of the minority of stockholders. Immense salaries are paid to officers; transactions are consummated by which the directors make money while the rank and file among the stockholders lose it; the honest investor waits for dividend and the directors grow rich. It is suspected, too, that large sums are spent under various disguises in efforts to influence legislation.

It is not consistent to claim that the citizen must protect himself by refusing to purchase stock. The law constantly recognizes the fact that people should be defended from false representations and from their own folly and cupidity. It punishes obtaining goods by false pretenses, gambling and lotteries.

It is a hollow mockery to direct the owner of a small amount of stock in one of these institutions to the courts. Under existing statutes, the law's delay, perplexity and uncertainty leads but to despair.

The State should either refuse to allow these corporations to exist under its authority and patronage, or acknowledging their paternity and its responsibility, should provide a simple, easy way for its people whose money is invested, and the public generally, to discover how the funds of these institutions are spent, and how their affairs are conducted. It should at the same time provide a way by which the squandering or misuse of corporate funds would be made good to the parties injured thereby.

This might well be accomplished by requiring corporations to frequently file reports made out with the utmost detail, and which would not allow lobby expenses to be hidden under the pretext of legal services and counsel fees, accompanied by vouchers and sworn to by the officers making them, showing particularly the debts, liabilities, expenditures and property of the corporation. Let this report be delivered to some appropriate department or officer, who shall audit and examine the same; provide that a false oath to such account shall be perjury and make the directors liable to refund to the injured stockholders any expenditure which shall be determined improper by the auditing authority.

Such requirements might not be favorable to stock speculation, but they would protect the innocent investors; they might make the management of corporations more troublesome, but this ought not to be considered when the protection of the people is the matter in hand. It would prevent corporate efforts to influence legislation; the honestly conducted and strong corporations would have nothing to fear; the badly managed and weak ought to be exposed.

## THE CIVIL SERVICE.

During the year the provisions of the act passed by the last Legislature to regulate and improve the civil service of the State have been put into operation. Fortunately a commission was secured whose members were in hearty sympathy with the principles of the law, and who possessed much practical knowledge of the needs of the public service. The Commission itself was also fortunate in obtaining the services of Silas W. Burt as Chief Examiner, whose experience in public affairs and familiarity with the best methods of regulating the civil service enabled him to render invaluable assistance to the commission and the State. The preliminary classification and the framing of rules contemplated by the act governing the appointments to place, having been completed and received my approval, the system will become operative in respect to all State officers and in all State institutions on the fourth day of the present month. This work, owing to the diversity of the State service and the number and variety of positions affected by the law, has been a task attended with many difficulties. Although some slight revision may be necessary, on the whole I am confident the scheme will be found practicable and effective, without being too rigorous or burdensome.

In addition the commission has co-operated with the mayors of cities who, under the law, have exclusive control of the municipal service, and in several cities, notably New York and Brooklyn, a thorough system of civil service has been prepared and promulgated as nearly in harmony with the State system, as the charters and statutes relating to municipal matters will permit.

New York then leads in the inauguration of a comprehensive State system of civil service. The principle of selecting the subordinate employes of the State on the ground of capacity and fitness, ascertained according to fixed and impartial rules, without regard to political predilections and with reasonable assurance of retention and promotion in case of meritorious service, is now the established policy of the State. The children of our citizens are educated and trained in schools maintained at common expense, and the people as a whole have a right to demand the selection for the public service of those whose natural aptitudes have been improved by the educational facilities furnished by the State. The application to the public service of the same rule which prevails in ordinary business, of employing those whose knowledge and training best fit them for the duties at hand, without regard to other considerations, must elevate and improve the civil service and eradicate from it many evils from which it has long suffered. Not in the least gratifying of the results which this system promises to accomplish, is relief to public men from the annoyance of importunity in the strife for appointments to subordinate places.[11]

## BUREAU OF LABOR STATISTICS.

On the 4th day of May, 1883, an act was passed providing for the appointment of a "Commissioner of Statistics of Labor," and on the tenth day of the same month such Commissioner was duly appointed.

It is declared by the act to be the duty of this officer "to collect, assort, systematize and present in annual reports to the Legislature, within ten days of the convening thereof in each year, statistical details relating to all departments of labor in the State, especially in relation to the commercial, industrial, social and sanitary condition of workingmen and to the productive industries of the State."

In the prosecution of his work under the law, the Commissioner has gained much from the experience of those similarly engaged in other States, and has possessed himself of valuable information which will, doubtless, aid him in the performance of his duties.

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[11] Chapter 357, passed May 24, and chapter 410, passed May 29, contained several amendments to the civil service law of 1883.

Chapter 312, passed May 19, contained a provision that persons who had served in the army or navy during the late Civil war and had been honorably discharged, should be entitled to a preference in appointments to positions in the civil service. A similar provision was included in chapter 410, amending the civil service law. [See 1883, note 11, *ante*, p. 838.]

Blanks have been prepared for the purpose of collecting the facts and statistics which it is expected this department will report. Such as have been already sent, were directed to parties who are engaged in the same branches of business and labor as are carried on in the prisons, reformatories and penitentiaries of the State.

Thus far, the Commissioner has devoted his attention almost exclusively to the examination of the system of convict labor and the contracts made by the State in connection therewith. The result of his investigation will appear in his report, which will soon be submitted.

## THE PRIMARY ELECTION LAW.

The act passed by the last Legislature and approved by me extending the laws to prevent and punish frauds and corruption in the primary elections or caucuses throughout the State was in most localities generally observed during the year and seems to provide absolutely for the correction in this State of what had come to be a great abuse.

In many sections of the State a nomination from one or the other of the principal political parties is practically equivalent to an election, and in every section, under our system of parties, pure primaries providing for an honest expression of public sentiment is one of the principal guaranties the people possess of their rights as citizens.

With this law in force the means are in the hands of the people, if they so will, to secure pure primaries.

## BOARD OF CLAIMS.

The last Legislature abolished the office of Canal Appraiser and the State Board of Audit, and substituted in their place a Board of Claims, consisting of three commissioners. In accordance with the terms of the act creating it, the Board organized in June last, and has since proceeded with the work of hearing and determining the mass of business transferred to it from the two abolished boards, and that which has since arisen.

The objections which were patent in the composition of the Board of Audit are obviated by the requirements of the law, while a single tribunal is provided, composed of men fitted by training and experience to examine all private claims against the State, many of which involve a judicial interpretation of the law. Instead of two courts of claims we now have one, and the satisfaction expressed by those who represent the interests of the State, as well as claimants, is sufficient proof of the wisdom of the law establishing this single tribunal.

Through neglect of the last Legislature no appropriation was made to meet the expenses of this Board, and you will therefore be called upon not only to make the ordinary maintenance appropriation for the coming year, but also to provide funds to pay the expenses of the Board from the time of its organization, June 1, 1883, until October 1, 1884, at which time the regular appropriation will become available.[12]

## NEW CAPITOL.

The people of the State are to be congratulated upon the unprecedented progress which has been made upon this structure since the 8th day of May, 1883, when the work was committed to new management, pursuant to a law of the last Legislature. A description in detail of the work done will not be attempted here, as the report of the Commissioner, containing a statement of the same, will be furnished as soon as practicable to the Legislature.

The rooms to be occupied by the Court of Appeals and its Clerk, located in the east end of the building, are ready for occupancy, and have been finished and furnished in an appropriate manner. The rooms adjoining them are also substantially finished.

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[12] Chapter 6, passed January 28, made appropriations for the Board of Claims.

A contract was made on the 19th of June, 1883, for the construction of the south-eastern staircase for the sum of $239,345.80. The preparation for the foundation of this great structure was a work of considerable magnitude. At the rate the work is now progressing it will be completed as soon as September 15, 1884, the date limited by the contract.

The Old Capitol and the State Library building, located east of the New Capitol, have been removed in preparing for the construction of the eastern approach. The State Library and Law Library have been temporarily placed in the room originally intended for the Court of Appeals and in the Golden Corridor adjoining, where they will remain until they are permanently located in the rooms designed for them in the west end of the building. It is exceedingly important that these rooms, and such others in the west end as are intended for the departments still remaining in the State Hall, should be completed as early as possible. When these apartments are finished, the whole interior of the building will be ready for use.

When the work was entered upon by the present Commissioner the granite and brick walls of the west end of the building were unfinished. The dimensions of this part of the structure are as follows: From north to south, 291 feet; from east to west, sixty-two feet, not including the space to be occupied by the great staircase, which is seventy-two by fifty-two feet — all comprising fully one-fourth of the floor space of the building.

It was deemed very important, that the west walls should be completed and the roof put on before the winter closed in, so that the work on the interior might be protected and further prosecuted without interruption on account of the weather, or the expense of a temporary covering. This involved the preparing and setting of a large amount of granite necessary for carrying up the walls, the great central gables, dormers and chimneys, and preparing for the roof and covering the same with slate, tile and glass. The work was entered upon with vigor and energy, and it is gratifying to report that the whole edifice is substantially roofed.

The total cost of the building to the fifteenth day of December, was $15,318,680.67. The total amount expended from April 9th to December 15th, 1883, was $900,481.23, leaving a balance on hand at that date of $99,518.77.

The number of men employed in all parts of the construction, for most of the time since the eighth day of May, has varied from thirteen to fourteen hundred. At the present rate of expenditure, the balance above mentioned will be exhausted within a very short time, and a failure to make an immediate appropriation will result in a stoppage of the work.

The Commissioner in charge has faithfully devoted himself to the performance of his important duties, and conducted the construction with energy and system, and with the most gratifying results. The taxpayers who have waited so long for relief from the burden of this gigantic work may cherish a well founded hope that the day of their deliverance is at hand. They have a right to demand, and they may expect, that the method, at last inaugurated, of exacting from employes a fair day's work for a fair day's pay will be continued without permitting the people's money to be wasted to secure partisan advantages. With an appropriation sufficient to continue the work with the same force of men as that employed during the past season, it can reasonably be expected that the entire interior of the structure will be completed by April first, of next year, and the approaches and porticoes comprising the exterior work unfinished, within two years from the present date.

The progress made this year is an added vindication of the usefulness in practice of concentrated responsibility.

Any regrets respecting the time which has been spent or the money expended in the erection of this building are out of place. Economy now is found in pushing to the utmost its completion.

There should be no check or interruption to the work so well in hand and so completely systematized; and I earnestly hope that in the interest of the tax-paying population, and to the end that the reasonable expectation of an early completion may be realized, the Legislature will make an early and liberal appropriation for its continuance.[13]

## PUBLIC BUILDINGS.

The act passed by the Legislature to remedy the evident neglect in the care of the public buildings, including the New Capitol, Old Capitol, State Hall, Agricultural Hall and Executive Mansion, and center in one person the care and maintenance of this property, was, in my judgment, eminently wise.

Under the old system each of these buildings was separately managed, supplies were purchased for each in comparatively small quantities at various prices, and in every respect they were maintained as distinct from each other, as though they were as many different properties belonging to different individuals.

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[13] An appropriation of $1,000,000 for continuing work on the new capitol was made by chapter 37, passed March 14. By a concurrent resolution adopted in February, the commissioner of the new capitol was requested "to remove and discharge every person in authority under or employed by him, who has heretofore applied or who shall at any time apply, directly or indirectly, any political test in the selecting or hiring of any employes on the capitol." The resolution also provided that "no person shall be employed or retained in employment on the capitol, who is not by experience and education qualified to fill the position for which he may be an applicant, or for which he has been employed," and the commissioner was prohibited from employing "any deputy or assistant who is not a skilled architect or builder."

The advantage of the new system is seen in the improved condition of the buildings and their furniture, in a reduced pay-roll, and in lower prices for supplies. The State buildings at Albany and their fixtures have cost many millions of dollars, and in themselves constitute a large property, which requires constant and intelligent care to preserve from decay and dilapidation. That heretofore, because of divided responsibility and an absolute lack of system, there has been great neglect in this matter, involving immense losses to the State is conceded. That the new system is in the line of the application of business methods to the administration of public affairs, and is an important reform, is already proven.

### THE ADIRONDACK WILDERNESS.

The Hudson, Mohawk and Black rivers are to a very large extent fed by streams and lakes in the southern slopes of the Adirondack wilderness; and the Black river may well be regarded as the principal feeder of the Erie canal. This statement renders the importance of protecting the water in the sources of the rivers named, from serious diminution, distinctly apparent. The fact that this can only be done by the preservation of the forests bordering on these sources of water supply, needs no demonstration and was recognized by the last Legislature by the passage of an act prohibiting the further sale of our northern wilderness lands.

The immense volume of commerce which passes through the Erie canal and the Hudson river to the seaboard, and the low stage of water during the summer in the last named waterway as well as the other rivers and streams of the State, have attracted the attention of the public to the necessity of arresting the further destruction of our northern forests.

This is certainly a very important matter, and should receive early and serious attention. We find ourselves facing the danger which now so excites the people, because the interests of the State have not been cared for in the years that are passed, and because our forest-laden lands have been recklessly disposed of at nominal prices, until, at this late day, we are awakened to the fact that the control which the State should have always maintained over that part of those lands which are important to the preservation of our streams has been to a large extent surrendered.

The plan has been, it seems, quite generally adopted by the grantees from the State to refuse to pay taxes assessed upon these lands after their purchase, and to permit them to be sold for such taxes, the owner taking advantage of the time between the levying of the taxes and the sale of the land to cut off and sell such timber as he finds to his profit. In default of other bidders at such tax sale, the State becomes the purchaser. Two years is allowed the delinquent owner after the sale to redeem his land.

Sales of these lands are customarily made by the Comptroller once in about five years, and then they are sold for taxes that have remained due and unpaid for a period not less than five years prior to the sale; thus in 1881 forest lands were sold for taxes levied thereon between the years 1871 and 1876. It will be readily seen that this allows the grantees of these lands, who from the first day of their ownership deliberately refuse payment of all taxes, from seven to twelve years within which to cut off and sell timber — thus realizing an immense return from the amount originally paid for the land.

Prior to the 23d day of November, 1883, the State had remaining of these wilderness lands in the neighborhood of 600,000 acres. The day named was the last on which large quantities which had been sold for taxes in 1881 could be redeemed; at the close of that day the State became the owner of 177,842 acres more, which had been bid in by it at such sale, and which was not redeemed. It must be conceded that this was a fair day's work on behalf of the State, in the direction of acquiring these important lands.

And the fact must not be overlooked that the trees cut from those lands thus far, have usually, if not always, comprised only those of a particular kind, which really make up but a small part of the forest which is necessary to the preservation of our water sources.

The occurrence of fires in this wilderness is an agency of destruction which should be guarded against. By this means not only the trees are destroyed, but what there is of a thin soil or mould surrounding their roots is so nearly consumed, that for a generation at least, trees and vegetation are not likely to reappear. These fires are, in most cases, the result of heedlessness on the part of lumbermen or excursionists and the guides accompanying them.

While we should not neglect to provide against any danger which threatens the supply of water in our important streams and rivers, it seems to me we are in the presence of another peril, against which we must vigilantly guard. I refer to the schemes which are likely, in the present state of the public mind, to be proposed, having for their object the purchase by the State of immense tracts of these lands, upon the representation that this is the only means of protecting the interests involved.

These lands owned by the State should be plainly located and declared, with what it may hereafter acquire, to be park lands; strict laws should be passed to prevent fires by carelessness, and to severely punish trespassers who shall cut down the trees; the guides should be under some kind of regulation and control, and it might not be amiss to establish some supervising authority to enforce the observance of the laws; and it would undoubtedly be well if the time permitted to elapse between the levying of taxes and a sale for non-payment, as well as the period allowed after sale for redemption, should be shortened. By the adoption of some such measures, I believe the danger which seems imminent may be averted; and until it has been demonstrated that any other plan must fail, it is, in my opinion, our duty to oppose any scheme having for its object the purchase of these lands, and involving, as it would, the expenditure of millions of money.

The last Senate appointed a committee to investigate this whole question, and it is expected that their report will contain valuable suggestions and recommendations.

## ADIRONDACK SURVEY.

In any effort instituted to protect the northern wilderness, we ought reasonably to anticipate much aid in the location of the lands, from this survey.

I find in the year 1876 an appropriation was made of $4,250 " to *complete* the topographical survey and exploration of the Adirondack wilderness." So far from its being completed for that appropriation, more money has been given for this purpose every year since. In 1878, the time to finish this " exploration and survey," was, by a statute passed on the twenty-eighth day of May, in that year, limited to six years from that date, the sum of $10,000 was appropriated for its purposes, and the act explicitly declares that, at the end of the time limited, " the topographical character of the work shall be complete in all respects throughout the area under survey."

Since that time and including the appropriation of that year, $65,000 has been drawn from the treasury of the State for the work which in 1876 it seems to have been supposed would be completed for $4,250, while the entire cost to the present date approximates $70,000, exclusive of a very large sum for the printing of costly reports.

To the ordinary understanding it cannot but appear that the time and money thus spent should insure a perfect and complete survey of this wilderness region.

It will be observed that the time limited by the law of 1878 for the completion of this exploration and survey, expires on the 28th day of May, 1884. It is earnestly hoped that the final day may develop some practical and useful results. However this may be, the day thus fixed should be the end. If we have not yet secured what we need, it is useless to depend longer on this instrumentality.

I recommend that the Superintendent of the Adirondack Survey be required, on or before the twenty-eighth day of May next, to deposit in the office of the State Engineer and Surveyor, all maps, surveys, and other results of his work, as well as all tools and instruments in his charge belonging to the State.

### THE STATE SURVEY.

Probably the duration and cost of this establishment were no more understood at the time it was inaugurated, and its results are now but little more apparent or appreciated, than those of the Adirondack Survey.

The State Survey made its first appearance in the legislation of the State in the appropriation bill for the year 1876, when $20,000 was appropriated "for making an accurate trigonometric and topographical survey of the State, for the determination of State and county lines." Commissioners were appointed who should, it was declared, hold office for *one year.* No provision is made for the appointment of any successors to these commissioners. In the appropriation bill of 1877 no money is appropriated for the survey, but it is declared that the term of office of the Commissioners should be extended to the 1st day of May, 1878. On the 6th day of May, 1878, a law was passed, the first section of which declares that, "in order to define the objects of the State Survey, to limit the expenses thereof and to provide for its speedy completion," the Commissioners theretofore appointed, naming them, "are hereby appointed to conduct the same in accordance with their last annual report to the Legislature, namely: The work is to be confined to fixing such meridian and other lines and points as are necessary to give correct bases for county, town and other surveys, so that they may be of permanent value at any time in the future."

No limit was fixed to the term of the Commissioners, and the sum of $14,300 was appropriated "for the purposes of this act."

Since that time it has had its place regularly in the appropriation bill year after year until the sum of $118,300 has been applied to this object. The language of the first two acts in which the survey is mentioned indicates, by the appointment of the Commissioners for one year, and extending their term an additional year, that it was supposed their duties would be of a temporary nature; and the language of the law of 1878 indicates that the object sought by that act was to define the objects of such survey, limit its expense and circumscribe its work. Nearly six years have passed, the large sum of money above mentioned has been spent, but little has apparently been accomplished, and we have no hint from the Commissioners or the Director of the time or money which will be necessary to complete the work. Its continuation is urged on the ground that it will be valuable to the cause of science. This consideration should be regarded; and it may be conceded too, that meridian and other lines should be fixed, and such "points as are necessary to give correct bases for county, town and other surveys;" but none of these things justify us in blindly spending the public money for a purpose the cost of which promises to be enormous, and the benefit of which may be realized only by posterity.

In my judgment this survey, and any others of a like character that are to be made for public benefit, should be prosecuted under the direction of the State Engineer and Surveyor, and the results constitute public records in his office. This officer is not at present overburdened with work, and no one who has not the engineering skill to direct such operations, is likely to hold the position. The expense of creating establishments to do such work, and the ease with which they grow into departments of the State, has often been demonstrated.

## NIAGARA FALLS RESERVATION.

The commissioners appointed under the law passed by the last Legislature, for the purpose of selecting and locating such lands in the village of Niagara Falls as may be necessary to be reserved for the purpose of preserving the scenery of the falls of Niagara have determined upon the lands which, in their opinion, should be reserved, and a map has been duly certified by them and filed as directed by the statute. Proceedings will be taken as soon as practicable for the appraisal of the land so selected, with a view of determining the cost attending the proposed reservation.

The project of releasing this far-famed natural wonder from the obstacles to its enjoyment which now surround it, and securing its scenery from destruction, appeals strongly to our State pride. It has, besides, certain features of practical benefit to our people which renders its success desirable if the expense attending it is not too great. The State is in no way committed to the consummation of the proposed reservation, and the whole matter will be submitted to the Legislature for its determination, upon the report of the Commissioners, when the same shall be presented.[14]

## STATE BOARD OF HEALTH.

This department has further demonstrated during the past year the wisdom of its establishment. The details of its work and operations will be presented in its forthcoming report.

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[14] In 1885, chapter 182, an appropriation of $1,433,429.50 was made for awards for lands taken for the Niagara Falls reservation under the act of 1883, chapter 336.

The powers vested in the Board relating to the investigation of nuisances and other causes of disease, the adulteration of food and drugs, and the sale of substances dangerous to the life and health of the people, has been efficiently and beneficially exercised. The advantages of its work to the State will be more marked as its methods become more completely systematized, and the scope of its operation increased.

## PLEURO PNEUMONIA.

By an act of the last Legislature the laws providing means for eradicating the disease of pleuro pneumonia among cattle were repealed, and a considerable sum of money which was being gradually expended to maintain a State agency in New York, of but little practical value, so long as adjoining States failed to co-operate with us, was turned into the general fund.

I have no knowledge of any loss resulting from the discontinuance of the State agency. It is a fact, however, that the germs of the disease exist in this country and within our own borders. The necessity for some general and effective action is apparent.

Other States are moving to memorialize the Federal Government to take proper action to stamp out the disease and protect the country from its dissemination. To this movement the State of New York should give its influence. I therefore suggest that a resolution be adopted by the Legislature at an early day, requesting the Senators and Representatives in Congress from this State to urge upon that body the need of Federal legislation on this subject.[15]

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[15] The Governor's suggestion was embodied in a concurrent resolution adopted in February, 1884, recommending "the enactment of a law to carry into effect the recommendations made by the treasurer of the cattle commission in its report transmitted to Congress in February, 1882, for the extinction of the lung plague, and to provide means therefor, or such other legislation as may speedily and effectually accomplish the result."

Chapter 418, passed May 31, "in relation to infectious and contagious diseases of animals," provided for the slaughter of diseased animals, and authorized the Board of Claims to hear and determine claims therefor.

## CONCLUSION.

The people of the State are to be congratulated upon the progress made during the last year in the direction of wholesome legislation.

The most practical and thorough Civil Service Reform has gained a place in the policy of the State.

Political assessments upon employes in the public departments have been prohibited.

The rights of all citizens at primary elections have been protected by law.

A bureau has been established to collect information and statistics touching the relations between labor and capital.

The sale of forest lands at the source of our important streams has been prohibited, thereby checking threatened disaster to the commerce on our waterways.

Debts and obligations for the payment of money, owned though not actually held within the State, have been made subject to taxation, thus preventing an unfair evasion of liability for the support of the government.

Business principles have been introduced in the construction and care of the New Capitol and other public buildings, and waste and extravagance thereby prevented.

A law has been passed for the better administration of the Emigration Bureau and the prevention of its abuses.

The people have been protected by placing co-operative insurance companies under the control and supervision of the Insurance Department.

The fees of receivers have been reduced and regulated in the interests of the creditors of insolvent companies.

A Court of Claims has been established where the demands of citizens against the State may be properly determined.

These legislative accomplishments, and others of less importance and prominence, may well be cited in proof of the fact that the substantial interests of the people of the State have not been neglected.

The State of New York largely represents within her borders the development of every interest which makes a nation great. Proud of her place as leader in the community of States, she fully appreciates her intimate relations to the prosperity of the country; and justly realizing the responsibility of her position, she recognizes, in her policy and her laws, as of first importance, the freedom of commerce from all unnecessary restrictions. Her citizens have assumed the burden of maintaining, at their own cost and free to commerce, the waterway which they have built and through which the products of the great West are transported to the seaboard. At the suggestion of danger she hastens to save her northern forests, and thus preserve to commerce her canals and vessel-laden rivers. The State has become responsible for a bureau of immigration, which cares for those who seek our shores from other lands, adding to the nation's population and hastening to the development of its vast domain; while at the country's gateway a quarantine, established by the State, protects the nation's health.

Surely this great Commonwealth, committed fully to the interests of commerce and all that adds to the country's prosperity, may well inquire how her efforts and sacrifices have been answered; and she, of all the States, may urge that the interests thus by her protected, should, by the greater government administered for all, be fostered for the benefit of the American people.

Fifty years ago a most distinguished foreigner, who visited this country, and studied its condition and prospects, wrote:

"When I contemplate the ardor with which the Americans prosecute commerce, the advantages which aid them and the success of their undertakings, I cannot help believing that they will one day become the first maritime power of the globe. They are bound to rule the seas as the Romans were to conquer the world. * * * The Americans themselves now transport to their own shores nine-tenths of the European produce which they consume, and they also bring three-fourths of the exports of the New World to the European consumers. The ships of the United States fill the docks of Havre and of Liverpool; whilst the number of English and French vessels which are to be seen in New York is comparatively small."*

We turn to the actual results reached since these words were written with disappointment.

In 1840 American vessels carried $82\frac{9}{10}$ per cent of all our exports and imports; in 1850, $72\frac{5}{10}$; in 1860, $66\frac{5}{10}$; in 1870, $35\frac{6}{10}$; in 1880, $17\frac{4}{10}$; in 1882, $15\frac{5}{10}$.

The citizen of New York, looking beyond his State and all her efforts in the interest of commerce and national growth, will naturally inquire concerning the causes of this decadence of American shipping.

While he sternly demands of his home government the exact limitation of taxation by the needs of the State, he will challenge the policy that accumulates millions of useless and unnecessary surplus in the national treasury, which has been not less a tax because it was indirectly but surely added to the cost of the people's life.

Let us anticipate a time when care for the people's needs as they actually arise, and the application of remedies, as wrongs appear, shall lead in the conduct of national affairs; and let us undertake the business of legislation with the full determination that these principles shall guide us in the performance of our duties as guardians of the interests of the State.

GROVER CLEVELAND.

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* See De Tocqueville's "Democracy in America," 7th ed., vol. 1, pp. 552, 554.

## SPECIAL MESSAGES.

**January 23. To the Legislature:**

"EXECUTIVE CHAMBER,
ALBANY, *January* 23, 1884.

"The Constitution requires that the Governor shall annually communicate to the Legislature each case of reprieve, commutation or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon or reprieve.[e] I herewith submit the information thus required, and further state that the number of applications presented for executive clemency was four hundred and forty-nine; number of pardons granted, thirty-nine; number of commutations granted, seventeen; number of respites, one; number of cases denied, one hundred and eighty-one, and number of cases pending, two hundred and eleven.

GROVER CLEVELAND."

January 28. To the Assembly:

**Veto of a bill entitled "An act authorizing the Board of Supervisors of Ulster county to issue bonds to meet and pay a portion of the bonds of said county, falling due March first, in the year eighteen hundred and eighty-four, and ratifying and confirming the resolution of said board to issue said bonds, passed at its annual session for the year eighteen hundred and eighty-three."**

"I was induced to approve a bill passed by the last Legislature, authorizing the issue of bonds by the county of Ulster for fifty thousand dollars, payable in the year 1895, to retire bonds of the same amount falling due on the first day of March, 1883, upon the understanding that peculiar and exceptional reasons existed which made the enactment of a special law for that purpose proper, and that another application of the same kind would not be made to the Legislature.

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[e] Const. 1846, art. 4, § 5.

The bill now before me authorizes the issue of the bonds of the county for seventy-five thousand dollars, payable in 1896, to retire that amount of bonds falling due on the first day of March, 1884.

I am not at all satisfied with the reasons given for the extension of this indebtedness, instead of its payment. As a general proposition, I believe that public as well as private debts should be paid as they mature.

But my chief objection to this bill is based upon the fact that if a postponement of the payment of the bonded indebtedness of a county is deemed wise and proper, a general law was passed in the year 1878, by which the same can be accomplished by its board of supervisors; and it appears that resolutions have been passed by the supervisors of Ulster county, fully authorizing the issues of the bonds provided for by this bill. The statute referred to seems to me sufficient and effective; and if it has imperfections, they should be remedied by amendment. In any event, the responsibility of transferring the burden of indebtedness now due to those who shall be taxpayers in the future, should rest entirely upon the local authorities having the interest of the county in their keeping.

The argument which has been presented to me, that prospective investors in the bonds to be issued will deem them more desirable if specially authorized by an act of the Legislature, should have no weight.

A plain, simple, general law, has been provided, under which these bonds may be issued, which is apparently sufficient for other counties which desire to postpone the payment of their indebtedness.

If the whims of those who may desire to invest in Ulster county bonds are to excuse the passage of this statute, all efforts to check special and unnecessary legislation of the most mischievous character may well be abandoned.

The evils attending the relaxation of the rule which refuses all special legislation in cases provided for by general laws, is illustrated by the presentation of this bill, which I suppose to be the result of favorable action upon a similar measure at the last session of the Legislature."

The bill was not passed over the veto.

January 31. To the Legislature: Transmitting the annual report of the Cooper Union.

January 31. To the Assembly:

"EXECUTIVE CHAMBER,
ALBANY, *January* 31, 1884

"I have the honor to transmit herewith the first annual report of the New York Civil Service Commission.

I desire to call attention particularly to the proposed amendments of the existing law, which will be found at the close of the report. They are such as the experience of the Commissioners has led them to suggest as proper and desirable to complete and render more effective the system of civil service reform, to which the State is fully committed.

Their importance should lead to their careful consideration at an early day. [See note 11.]

GROVER CLEVELAND."

February 11. To the Senate:

"EXECUTIVE CHAMBER,
ALBANY, *February* 11, 1884.

"I acknowledge the receipt of a copy of the following resolution, adopted by the Senate on the sixth instant:

'*Resolved,* That His Excellency the Governor be and he is hereby respectfully requested to transmit to the Senate, at his earliest convenience, any knowledge and information he may have in his possession as to the performance of the duties of the captain of the port and harbor masters of the port of New York, by the dock department, or its subordinates, since the 24th day of May, 1883.'

In the annual message which I transmitted to the Legislature at the beginning of its present session, pursuant to constitutional requirement, I ventured to recommend the abolition of the offices of captain of the port and harbor masters, and that the duties devolved upon these officials should be transferred to the department of docks in the city of New York.

In advocating this change, and as proof that it was entirely practicable, the following language was used:

' It appears from statements made to me that this service has been assumed by this department and substantially performed under its direction during the past season.'

This declaration was officially and deliberately made, and I am not aware that it should be modified; the statements upon which it was based I then believed to be true, and I have no reason to doubt them now. Such declaration may, therefore, at this time, be reiterated as a response to the resolution which has been submitted to me.

I hope that I should not be justified in assuming that the Senate seeks to pass judgment upon the weight which I should give to the evidence presented to me upon this subject. I fully appreciate the fact that if I am misled by insufficient proof or by an improper estimate of its value, I alone must bear the responsibility and meet the consequences.

The resolution before me is silent as to the purpose of its adoption. If it had its rise in the pendency of proposed legislation involving an inquiry touching the performance of the duties pertaining to the offices of captain of the port and harbor masters, I beg to remind the Senate that the facts necessary to intelligent action are easily derived from official sources, other than the Executive Department.

If such legislation shall be presented to me for official action, it will be my plain duty to avail myself of all the knowledge and information I now possess, or which I may be able to acquire, in order that I may be rightly guided in the discharge of constitutional obligations. Until that point is reached, I am impressed with the idea that the proprieties are better preserved if the Legislature acts without interference, or a detailed presentation of facts touching pending legislation, on the part of the Executive. If facts in his possession, or reasons which seem to him sufficient, lead him to differ with the Legislature, a time has wisely been designated by the Constitution when such facts and reasons shall be submitted to that body for its examination and review.[f] I can hardly think it well to anticipate the time thus fixed.

I desire to do all that the utmost courtesy to the Senate implies, and disclaim any disposition to refuse proper aid in the discharge of its duties; but I am of the opinion that a more detailed answer to the resolution now submitted to me, than has already been given, might confuse our relations to legislative action, and establish a precedent that would hereafter lead to mischief and embarrassment.

GROVER CLEVELAND."

February 12. To the Assembly: Transmitting a communication from Hon. Robert T. Lincoln, Secretary of War, requesting the cession to the United States of land on Long Island to be used in connection with the Cypress Hills National Cemetery.[16]

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[f] Const. 1846, art. 4, § 9, am. 1874.

[10] This cession was made by chapter 75, passed April 2.

February 20. To the Assembly:

**Veto of a bill entitled "An act to prohibit the laying of any railroad in, on or under, or the laying upon or excavating or tunneling of any public park north of Amity or West Third street, west of Broadway and south of Thirty-fourth street in the city of New York."**

" It is conceded that the only public park to which the provisions of this bill apply, is known as Washington Square or Washington Parade Ground; and the object of the bill is to prevent the construction of any railroad within a tunnel under said park.

By chapter 380 of the Laws of 1878, it is provided that this park " shall be used in perpetuity as one of the public parks or squares or places of the city, and shall be kept by the department of public parks in proper order, ornamented and protected for the public use as a public park, and for no other use or purpose whatsoever."

Chapter 582 of the Laws of 1880, which authorizes the building of tunnels for railroad purposes, declares that nothing in said act shall be construed to repeal the statute of 1878 above referred to, " or to authorize the use or occupation by any company or companies, of any public park or square in any city or village of this State for any of the purposes of this act, or to permit the construction of an open cut railroad in or through any street or public place in any such city or village, but any road constructed under the provisions of this act in or through such street or public place, shall be wholly underground and constructed in a tunnel and not otherwise."

It is evident that the park, which it is the object of this bill to protect, is well defended from disturbance by existing statutes. If any point remains unguarded, it is a possibility that a railroad may be constructed in a tunnel under such park; and this is prohibited by the proposed bill.

The parks and public places within the city of New York should be reasonably protected; and if this bill prohibited the construction of a railroad beneath the soil of the park in question, in a manner or at such a depth as would injure or destroy its trees or other ornamentations, the question would be whether the park should be sacrificed for such a purpose. But the prohibition is against any construction under the park, though it should be at a depth that would positively insure against damage or destruction.

This, it seems to me, is unnecessarily broad and sweeping. Such a provision might prevent a construction underground that would be valuable to the public and which would not in any way impair the beauty and usefulness of the park."

The bill was not passed over the veto.

February 25. To the Assembly:

**Veto of a bill entitled "An act to change the name of the Spring Supply Water Company of Oneida, New York, to the Warner Water-works."**

"I am at loss to discover any reason why the appropriate name which this corporation first adopted should be changed as proposed, unless it is to give notoriety to an individual or his achievements.

But if there are any sufficient grounds for such a change it can be accomplished under existing statutes by an application to the Supreme Court for that purpose.

This bill, it seems to me, is a specimen of most objectionable and useless special legislation, which should be rejected on its first appearance."

The bill was not passed over the veto.

March 3. To the Senate: Transmitting a communication from the Hon. George B. Loring, United States Commissioner of Agriculture, enclosing a memorial from the

American Forestry Congress, recommending action by the States for the preservation of the forests, especially experiments in forest culture. [See Senate Document No. 41.]

March 3. To the Assembly:

**Veto of a bill entitled "An act to amend chapter twelve of the Laws of eighteen hundred and eighty-four, entitled 'An act to provide for a commission to examine into the operation of the contract labor system in the prisons, penitentiaries and reformatories in this State.'"**

"The original act which this bill seeks to amend provides that the commissioners appointed by virtue thereof shall hold their offices until the 1st day of March, 1884, and that their report shall be made to the Legislature not later than that date.

The bill now before me so amends this act as to provide that the terms of the commissioners shall continue until their report is made, which it is declared shall be done at the earliest practicable date consistent with the performance of their duties.

The amendatory bill was passed by the Senate on the first day of March, and was presented to me between two and three o'clock in the afternoon of the same day. If the terms of these commissioners, under the original law, expired with the twenty-ninth day of February, it seems to be conceded that, they being out of office on the first day of March, an amendment passed on that day would fail to reinstate them or continue their powers as commissioners. But the bill was passed upon the theory that the commissioners appointed under the original act, held their offices till the close of the first day of March, and that therefore their terms might be extended by legislation receiving Executive approval on that day.

The examination I was able to give the question, during the few hours left me to act upon the bill, convinced me that the limitation of the term, by the words, "until the first day of March,'' excluded the latter day, and that the offices expired with the close of the twenty-ninth day of February. I am led to this conclusion by the natural import of the words, by a decision of the Court of Appeals, covering, I think, the exact point, by a reference to the language of other statutes, and by the opinion of able lawyers with whom I have consulted.

If this view is correct, my approval of the bill under consideration would not accomplish the result desired; and if the commission is to be revived it must be done by other legislation. I have, therefore, determined not to approve the measure.

There are some other objections to the bill, which, in view of the fact that the Legislature will probably deem it wise to restore the commission, and that prompt action will be taken for that purpose, may well be here noticed.

There is no provision made for filling vacancies in the commission, nor is there any appropriation of money to pay its expenses. The propriety of supplying these defects is quite apparent. They existed in the original bill, which was approved by me, but as they were not necessarily fatal I was not willing to delay the work of the commission by interposing a veto.

When the original bill was approved, no law had been passed abolishing the contract labor system, and it was not supposed that this would be done until the report of the commission should be presented. In this condition of affairs the commissioners might well be invested with the powers and duties defined and limited in sections two and three of the act authorizing their appointment, as follows:

§ 2. The said commission is hereby authorized and empowered to examine into and report upon the practical operation of the contract system for the employment of convicts in the State prisons, penitentiaries and reformatories of this State, as now required by law, and particularly as to the effect of such employment upon prison management and discipline, upon the prisoners and upon the community at large; and for such purpose the said commissioners or any of them shall have full power and authority to enter any and all such institutions at all times, and shall have power to examine witnesses and to send for and examine books and papers.

§ 3. The said commission shall report their conclusions, with such recommendations as they may deem proper, as to the best method of employing such convict labor, to this Legislature, not later than the first day of March, etc.

It will thus be seen that almost the entire scope of the duties required of the commissioners, and the powers vested in them, had reference to an examination concerning the then existing system of contract convict labor.

The people had condemned this very system at the polls, and by an emphatic majority had declared that it should be abolished. The Legislature had the power and the right, if they saw fit, to make further inquiry by means of the commission, before they complied with the demands of the people thus expressed. But before the commissioners were well under way the Legislature, almost unanimously, passed a bill abolishing the contract labor system. This bill has, to-day, received executive approval; and by virtue of such enactment the vexed question of contract convict labor is disposed of and settled.

The bill now under consideration is objectionable, because it continues and re-enacts the provisions of the original act, by which the commissioners are directed to examine into the merits of the contract system, which has been abolished, instead of requiring them to devote all their attention to the selection of a substitute therefor.

The title of the bill should be changed, and the powers and duties of the Commissioners should be strictly confined to such an examination as will enable them to report a satisfactory and economical plan, to be adopted in lieu of the abolished contract system.

Manifestly, this is all that remains in connection with this subject, and it most urgently demands the immediate and serious attention of the Legislature.

All concede, I believe, that the prisoners should be in some manner employed, and that they should not be maintained in idleness, entirely at the expense of the public.

The workingmen and manufacturers who are, or honestly believe themselves to be, injured by contract convict labor, have made their demands in good faith and their demands have been complied with by the abolition of the system of which they complained. Abundant opportunity has been afforded parties and individuals to gain such partisan and personal advantage as the subject has been supposed to offer; and it seems to me that now the interests of the taxpayers of the State should be considered.

It will, I think, be generally conceded that the substitution of any new plan for the employment of convict labor will increase taxation and sacrifice the self-supporting feature of our penal institutions; in any event this must be the result in the first stages of its operation. The fact may well be recalled that a little more than six years ago, the people were taxed more than seven hundred thousand dollars for the maintenance of our prisons. I am bound to assume that the change of system determined upon, will justify an increased taxation; and while this branch of the question should be fairly met, the plan should be selected that will be efficient and still increase in the least amount the burdens of the taxpayers.

I am decidedly of the opinion, too, that if the commissioners are to be retained by new legislation, they should be required to report to the present Legislature. If they are relieved from the duty of examining all the branches of inquiry connected with the subject of contract convict labor, and address themselves to the task of simply preparing a new plan for adoption in its stead, their labors will of course be much shortened and made easier. A number of investigations which have already been made will afford them aid, and the results of the thorough examinations just completed by the commissioner of statistics of labor are at their command.

I am informed that in one prison a contract for the labor of two hundred and ten convicts will expire on the last day of the present year, and another for two hundred and sixty-five on the 28th day of February, 1885. Some means should certainly be devised in advance of the expiration of such contracts, to keep these four hundred and seventy-five convicts employed. This is necessary as well for their own good and the discipline of the prison, as from motives of economy. There should be no chance taken of their continued idleness while another Legislature, to a great extent new to the subject, is settling upon a plan for their employment.

In justice to the counties having penitentiaries where convicts are employed, this question should be speedily settled. They receive prisoners from adjoining counties and make contracts for their custody, based, to a great extent, upon the manner in which their labor may be utilized.

I have no doubt that the commissioners heretofore appointed, if the range of their inquiries is limited simply to the presentation of a plan for convict labor, can readily report to this Legislature without any extension of the session for that purpose. I think the Legislature should agree with me on this subject, since the commissioners were allowed by the original bill only three weeks to report concerning subjects involving an infinitely broader field of inquiry than that now proposed. But in any event the Legislature should remain in session till this very important matter is disposed of and an end put to agitation on the subject.

And inasmuch as it appears to be quite certain that any change of system will involve expense to the State, the amount of such expense should be ascertained and the necessary appropriation made therefor.

Though, under existing laws, the Superintendent of Prisons might have authority to employ the convicts, temporarily, in some of these institutions, this course would necessitate the expenditure of considerable sums of money, without reaching the reformatories and protectories, which are not under the control of the superintendent.

I hope that prompt action on the part of the Legislature will result in the speedy passage of a law which, in a sensible and business-like way, will limit to the lowest amount the increased taxation likely to follow from a change in the manner of employing convict labor, and which, at the same time, will remedy any abuses and defects of the system which has been abolished."*

The bill was not passed over the veto.

March 4. To the Assembly: Transmitting the annual report of the Sailors' Snug Harbor.

March 5. To the Assembly: Transmitting the annual report of the Board of Commissioners of Quarantine.

March 6. To the Senate:

**Veto of a bill entitled "An act to change the corporate name of the Association for the Benefit of Colored Orphans in the city of New York, to the Colored Orphans' Asylum and Association for the Benefit of Colored Children in the city of New York."**

"I have once before refused, during the present session of the Legislature, to approve a bill of this character, upon

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*See note 6, *ante*, p. 957. Governor Cleveland's construction of the word "until" seems to have been sustained by People v. Walker (1858), 17 N. Y. 502, in which it was said that the word "until" in a statute was exclusive, and did not include the last day mentioned. See also Clark v. New York (1889), 111 N. Y. 621, and Apgar v. Hayward, 110 N. Y. 225. It may be observed that by the prison commission act, the commission was required to file its report not later than the 1st day of March, which perhaps manifested a legislative expectation that the commissioners would be in office on that day, for they were to continue in office "until" the first day of March, and by another provision might have presented their report on that day.

the ground that the desired purpose can be accomplished by application to the court under laws already existing. The bill now presented to me should be dealt with in the same manner and for the same reason. By section 1 of chapter 322 of the Laws of 1870, as amended by chapter 280 of the Laws of 1876, it is provided as follows:

'Any incorporation, incorporated company, society or association, organized under the laws of this State, excepting banks, banking associations, trust companies, life, health, accident and fire insurance companies, may apply at any Special Term of the Supreme Court, sitting in the county in which shall be situated its chief business office, for an order to authorize it to assume another corporate name.' "

The bill was not passed over the veto

March 6. To the Assembly:

" EXECUTIVE CHAMBER,
ALBANY, *March* 6, 1884.

" I deem it my duty to call the attention of the Assembly to the fact that in a recent examination which has been made touching the repairs made to certain armories and arsenals of the State, a condition of affairs has been developed which indicates with reasonable certainty that the amounts charged and paid for such repairs have been grossly excessive, and that the moneys of the State have been wrongfully obtained by means of false and misleading vouchers and fraudulent devices.

The particulars of these allegations will not be here detailed; but evidence is at hand which, in my judgment, justifies me in recommending a thorough and rigid examination of all the facts connected with the repairs above mentioned, to the end that if the State has suffered wrongs, they may be redressed, and if the public funds have been improperly obtained, they may be recovered.

I therefore respectfully request that a committee of the Assembly may be appointed, which shall be authorized and directed to investigate, concerning all repairs made at the expense of the State on arsenals and armories, and that they report thereon within such reasonable time as may be fixed.[17]

GROVER CLEVELAND."

**March 10. To the Senate:**

**Veto of a bill entitled "An act to amend chapter six hundred and twenty-one of the Laws of eighteen hundred and fifty-seven, entitled 'An act to condense and amend the several acts incorporating or relating to the village of Skaneateles.'"**

"At the last session of the Legislature, a bill was passed for the purpose of amending the charter of the village of Skaneateles, so badly constructed and unintelligible that I could not approve it. At the present session another bill was passed on the same subject, in which the vices of the former were so faithfully preserved, that it was withdrawn from my hands for amendment. As amended, it is now before me again, but still so imperfect that I think it should not become a law.

It provides for the election of a street commissioner, and his powers and duties are defined; but sections of the original law are left untouched, devolving almost identical powers and duties upon other persons. This cannot fail to beget uncertainty and confusion.

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[17] The Assembly, on the 6th of March, adopted a resolution appointing a select committee composed of five members "to investigate all repairs made to the arsenals and armories of the State" and report as soon as practicable at the same session.

The committee made a special report on the 7th of May, and on the same day the Assembly adopted a resolution enlarging the powers of the committee, so as to authorize it to investigate concerning the expenditures of all moneys that have been appropriated for the establishment and maintenance of the military department of the State. The committee was also authorized to continue its investigations after the adjournment of the Legislature.

The report of the committee, as directed by the resolution, was filed in the office of the Secretary of State and was by him transmitted to the Assembly on the 14th of January, 1885. The report does not seem to have been printed.

Another provision of the bill vests the trustees of the village with the power to establish and maintain a police force. A chief of police is mentioned and he is given certain powers, but no other members of the proposed force are provided for; while sections of the original charter making the president of the village the head of the police, and authorizing the board of trustees to appoint one or more police constables, remain unaltered.

Section five of the bill provides for the amendment of subdivision ten of section three of title five of the original charter.

There is no such subdivision of the section mentioned, and it is evident that a mistake has occurred through carelessness in drafting the bill.

The original charter contains a very wholesome and proper prohibition against the borrowing of money by the village, or the incurring of liability. An amendment proposed in this bill, though its language is somewhat obscure, permits, I think, the greatest latitude in this direction.

Without referring to other imperfections, it is evident that this bill is no better, and, perhaps, not much worse, than many of the same nature which are prepared without a very clear idea of their necessity, introduced without knowledge of their contents and passed with but little examination.

The bills amending village charters that are so constantly and upon slight pretexts presented to the Legislature, consume much time to very little purpose, and they should be rejected as often as it can be done without absolute injury.

The general laws which have been passed authorizing the incorporation of villages, it seems to me, meet every conceivable need of these communities; and if the provisions of such laws were made applicable to villages having special charters, so far as they are not in conflict therewith, much trouble and annoyance would be prevented, and the people of the villages within the State would be abundantly protected.

I earnestly recommend that a law be passed for that purpose.''

The bill was not passed over the veto.

March 14. To the Assembly:

**Veto of a bill entitled "An act to amend chapter four hundred and thirty-six of the Laws of eighteen hundred and seventy-seven, entitled 'An act in relation to county treasurers,' as amended by chapter five hundred and eighty of the Laws of eighteen hundred and eighty."**

'' Chapter 436 of the Laws of 1877, contains valuable provisions limiting the receipts of county treasurers to a fixed salary, and giving to the counties the benefit of interest on moneys deposited and certain fees and perquisites, which had theretofore been claimed by the county treasurers.

This statute also contains other provisions touching these public officers, defining distinctly their duties and responsibilities in their relations to the people. It is a law altogether in the direction of better government.

The only objectionable section was the last one, numbered ten in the original statute, which read as follows:

' § 10. Nothing herein contained shall apply to the counties of Monroe and Seneca.'

Every year thereafter, up to 1880, this section was amended by adding counties to those excepted, until at that time twelve counties had been taken out of the operation of the law.

On the 8th day of May, 1880, the act was amended by adding a section to be called section ten, containing important provisions entirely disconnected with the exception of any counties, and the original section ten, containing such exceptions, was changed to section eleven, and amended so that it was restored to its original reading as quoted above, which only excepted the counties of Monroe and Seneca; and from that time the section of the act of 1877, relating to excepted counties, became section eleven instead of ten.

On the 25th day of June, 1880, a law was passed amending section ten of the law of 1877, so that it should read as follows:

'§10. Nothing herein contained shall apply to the counties of Sullivan, Putnam, Greene, Monroe, Onondaga, Columbia, Seneca, Essex, Delaware, Cortland, Queens, Madison, Oswego, Rensselaer, Livingston and Erie.'

The effect of this legislation was to strike out the new section ten, which had a few days before been inserted in the original law, and substitute in lieu thereof a provision excepting sixteen counties from the operation of the original law.

Both in 1881 and 1882, the first section of the law of 1880 was amended by providing, in effect, that it should amend section eleven of the law of 1877, instead of section ten.

While, therefore, by these last acts the mistake in the law of 1880 was corrected, the bill now before me, which amends section ten of the law of 1877, as amended by the law of 1880, restores the erroneous condition of things as they existed after the passage of the law of 1880, as above explained, with the county of Fulton added to the counties excepted.

Of course this mistake is sufficient reason for rejecting the bill.

And if it only accomplished the exception of another county from the operation of the original law of 1877, I should be inclined to withhold my approval of the bill, for the reason that in my opinion treasurers of all the counties should be limited and restrained by the wise and wholesome provisions of such original law.''

The bill was not passed over the veto.

March 26. To the Assembly:

**Veto of a bill entitled "An act to amend section three of title two of chapter two hundred and ninety-eight of the Laws of eighteen hundred and eighty-three, entitled 'An act to provide for the government of the city of Albany, passed April twenty-third, eighteen hundred and eighty-three.'"**

'' This bill purports to amend the charter of the city of Albany. It has been in my hands once before and was recalled for amendments. The result is that it is now presented to me in such a form that no sane man would attempt to interpret it. After providing that in case certain apportionments or assessments are set aside for irregularity, a new apportionment or assessment shall be made, the following language is used:

' Provided that all bridges constructed on the line of any street or avenue, or avenue culverts constructed over or along the line of any living constant stream of running water, and the maintaining and repairing of the same within the city limits; and the amount of money required to defray the expense thereof, shall not exceed twenty thousand dollars in any municipal year, and said sum shall be raised by tax in the same manner as other city taxes are levied and collected; also ordinary repairing the carriage-way at the intersection of all paved streets, and the carriage-way of all streets now paved or that may be hereafter paved with granite blocks or other kind of square stone pavements, and the repairing of the carriage-way of any unpaved earth, planked or macadamized streets, and the cross-walks thereof, except as otherwise specially provided by law, or where by law the expense thereof is to be paid by some other corporation or individual, shall be charged upon said city; and the amount of money required to defray the expense thereof, which (except in the case of the bridges and culverts) shall not exceed five thousand dollars in any municipal year, shall be raised by tax in the same manner as other city taxes are levied and collected.'

A few more amendments of this description would make the charter of Albany a chaotic mass of absurdities."

The bill was not passed over the veto.

March 26. To the Assembly:

**Veto of a bill entitled "An act authorizing the Venice Town Insurance Company to change the location of its business office."**

"I am not aware that there is any necessity for the passage of this bill. If the Venice Town Insurance Company desires to change the location of its business office from East Venice to Genoa, I think there is no objection to such a transfer. And if it is necessary or proper that such a change of location should be sanctioned by law, a general statute should be passed vesting in the directors of such institutions the power to make the change."

The bill was not passed over the veto.

April 7. To the Senate:

**Veto of a bill entitled "An act to authorize the board of education of the Baldwinsville Union Free School District to borrow money."**

"A general law has been enacted at the present session of the Legislature, being chapter 49 of the Laws of 1884, which permits the borrowing of money, and the issue of bonds therefor by the boards of education of union free school districts, when authorized by the voters of the districts, in cases like this provided for by the bill herewith returned.

This enactment obviates the necessity of conferring such authority by special legislation."

The bill was not passed over the veto.

April 7. To the Assembly:

**Veto of a bill entitled "An act to incorporate the city of Amsterdam."** [18]

" This bill was first presented to me for my official action on the twentieth day of March last. A very slight examination developed the fact that it contained various provisions which were objectionable, while the usual number of errors were apparent in its construction. At my suggestion the bill was recalled by the Legislature for amendment and correction. Certain alterations having been made, the measure is again before me.

It still contains provisions which I cannot approve.

By section ninety, the city is authorized to appropriate the land necessary to make, lay out or open streets and other improvements. It is provided that notice of the determination to take such lands shall be given to the owners thereof, by publishing the same in two newspapers, once in each week for two weeks, in which shall be specified a day on or before which such owners may file their claims for damages by reason of the taking of such lands. It is further provided that in case no claim shall be so filed, the owner of the land to be appropriated, shall be deemed to have waived all claim to damages, and to have consented and agreed to such improvement.

I am of the opinion that these provisions do not answer the requirements of the Constitution, to the effect that private property shall not be taken for public use without just compensation.[g] And if this were not so, I am entirely convinced that the plan proposed in this charter for the appropriation of land belonging to the citizen does not sufficiently protect private rights.

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[18] The city of Amsterdam was incorporated in 1885, chapter 131. This act was sustained in Re Amsterdam (1891), 126 N. Y. 158.

Section ninety-five provides that in case the whole of any land subject to any lease or agreement shall be taken for such improvements, the lease or agreement shall, upon the confirmation of the assessment for such improvements, cease, determine and be absolutely void; but that in case a part only of such land shall be taken, the county judge of Montgomery county 'may, on application in writing of either or any of the parties interested in such lease or agreement, appoint three disinterested freeholders to determine the rents, payments and conditions which shall be thereafter paid and performed under such lease or agreement in respect to the residue of such real estate; and the report of the freeholders, or any two of them, on being confirmed by the court, shall be binding and conclusive on all persons interested in such real estate.'

It is hardly necessary to point out the injustice that would be likely to result from the opportunity given by one party to a contract without any notice to the other, to have men appointed to make a new contract binding and conclusive on all persons to be affected thereby. It seems to me to be in direct and flagrant violation of principle and right.

Section ninety-six contains provisions relating to assessments for improvements which are of doubtful expediency, and which certainly appear to be much confused and entirely inconsistent with each other.

Section one hundred and four of title ten attempts to provide for the expense of maintaining a bridge between the town of Amsterdam and the town of Florida. In one part of the section it declares that the expense shall be borne by the proposed city and the town of Florida, in the ratio which the assessed valuation of the city property bears to that of the town; but an amendment has been added to the section, which, if it means anything, establishes an entirely different standard by which the expense of maintenance shall be apportioned between the said city and town.

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[g] Const. 1846, art. 1, § 6.

Section one hundred and twenty-three permits 'the mayor, recorder and aldermen, and each and every of them, and the constable and policeman' at any and all times to arrest, or cause to be arrested, with or without process, all vagrants or disorderly persons, or any person who may be found by them committing any crime, misdemeanor or breach of the peace; and it gives them power while in pursuit or search of any such person, to enter, or cause to be entered, with or without process, any building or place in said city.

This section, if allowed to become operative, would permit practices dangerous to the liberty of the citizen and subversive of his most valuable rights.

There are other serious imperfections in this charter which will not be here specifically noticed. Since it was first presented to me, the village of Amsterdam has elected officers for the ensuing year, and I have no doubt the residents of the village, who do not appear to be unanimously in favor of the proposed change, will do quite well if they are obliged to live another year under a village government.

It is well for the people living in villages, who are ambitious to secure a city charter, to understand that the enjoyment of urban residence necessarily entails a great increase of expense and taxation. This being the case, it would be proper, it seems to me, if such a change could not be made without a formal expression of the people on the subject. In any event the matter should be fully and freely discussed, and if a city charter is to be allowed, it should be prepared with the greatest care and deliberation, and solely in the interest of those to be governed thereby."

The bill was not passed over the veto.

April 8. To the Assembly:

**Veto of a bill entitled "An act to authorize the common council of the city of Binghamton to submit to the taxpayers of said city the question whether a judgment recovered against William Whitney, as superintendent of streets and city property, shall be paid by said city."**

"This bill provides that the common council of the city of Binghamton shall order a special election, at which the question shall be submitted whether the sum of one thousand six hundred dollars and fifty-seven cents shall be paid by said common council to Edward L. Bennett, or his attorney, being the amount of a judgment obtained by said Bennett against William Whitney for an injury incurred on one of the streets of said city while the said Whitney was superintendent thereof. It is further provided that if a majority of the votes cast at such election shall be for "Special Tax," the common council shall at once, if it shall deem best, pay the said judgment, or the amount thereof may be inserted in the next following tax roll of said city, to be collected as other taxes are collected and paid over when so collected.

I suppose the judgment which it is proposed to pay, if authorized by a majority of the voters, was recovered against the superintendent of streets for an injury sustained by the unsafe or imperfect condition of one of the streets under his charge, and that the recovery was based upon the negligence of such superintendent. It is quite clear that, under the bill, the judgment is to be paid with the money of the city derived from taxation.

The charter of the city of Binghamton provides that the municipality 'shall not be liable to any person or corporation for the malfeasance, misfeasance, nonfeasance or negligence of any officer or officers, agents, servants or employes who may be elected, appointed or employed pursuant to any of the provisions of this act.'

Under this charter, and presumably with full knowledge of this unusual provision, which absolves the city from all liability for his neglect and makes him solely responsible for the same, the superintendent accepted office. And whatever apparent hardship there may be in his present condition, or whatever inclination there may be on the part of a majority of the voters of the city to relieve him from the liability he has incurred, or to pay to the plaintiff in the judgment the amount of the same, it must be conceded that the object of this bill is to give the money of the city, in the absence of any obligation on its part, to an individual, or to allow the city to incur a debt for that purpose.

This, it seems to me, cannot be permitted under section 11, article 8 of the Constitution of the State, which provides that 'no county, city, town or village shall hereafter give any money or property, or loan its money or credit, to or in aid of any individual, association or corporation. * * * Nor shall any such county, city, town or village be allowed to incur any indebtedness, except for county, city, town or village purposes.'

Of course, if the project to pay the judgment mentioned in the bill, from the city funds, is within this prohibition of the Constitution, it is not aided by the affirmative vote of a majority of the electors who may pass upon the question.

There is now in the charter of the city of Binghamton a very broad provision permitting the raising of money by special tax, after a favorable vote of the people, when two-thirds of the common council 'shall be of the opinion that the interests of the city require the expenditure of money for any extraordinary or special purpose.' There is reason to suppose that this existing provision of the charter could be made as effective to accomplish the purpose desired as the bill under consideration.

In any view of the question, I am of the opinion that the bill is unconstitutional and should not become a law."

The bill was not passed over the veto.

April 9. To the Assembly:

**Veto of a bill entitled "An act supplementary to chapter 252 of the Laws of 1857, entitled 'An act to incorporate the Genesee Camp Ground Association.'"**

"The original act by which this association was created, appoints nine trustees and provides the manner in which their successors may be elected, and fixes their terms of office.

The bill herewith returned names in its first section nine other persons who are constituted trustees of this association in addition to those authorized by the original act. They are directed to meet during the annual meeting of the association in the present year and divide themselves into three classes of three members each. It is provided that the term of office of the first class shall expire at the annual session of the Genesee Conference of the Methodist Episcopal Church, held in the year 1884, and the term of the other classes respectively, at the same time in the years 1885 and 1886. The said conference is authorized to elect three trustees at its annual session in 1884, and the same number at every annual session thereafter to fill vacancies occasioned by the expiration of the terms of offices of the newly constituted trustees.

I think the provision of the bill that the terms of the trustees therein named, shall expire at the annual session of the Genesee Conference is objectionable because it fixes an uncertain time for such expiration.

Besides, there is absolutely no term fixed for such trustees as shall be elected by the Conference to fill the places of those named in the bill; and I see nothing to prevent the indefinite continuance in office of the trustees thus elected.

This could not have been the intention of the promoters of this measure.

I can see no advantage to be gained by the proposed increase of the trustees of this association; but if such increase is for any reason expedient, the nine trustees to be selected by the Conference should not hold their offices for life as against an equal number elected under the original law, who hold for a definite time, and who are selected by the parties apparently more immediately connected with the association.''

The bill was not passed over the veto.

April 14. To the Assembly:

**Veto of a bill entitled "An act to amend chapter three hundred and nineteen of the Laws of eighteen hundred and forty-eight, entitled 'An act for the incorporation of benevolent, charitable, scientific and missionary societies,' and the several acts amendatory thereof."**

'' This bill proposes to add to the law of 1848 two new sections, which provide for the dissolution of all corporations organized by virtue of said act, and the application of the property owned by them, or the proceeds thereof, after payment of debts, to any such religious, benevolent, charitable or other object or purpose, as the trustees, in a petition to be presented to the court, may indicate, and the said court shall approve. It provides that the proceedings may be instituted by a majority of the trustees or directors, when the corporation shall cease to act in its corporate capacity, or is desirous of closing its affairs. A notice of the time and place of such intended application to the court is, by implication, required to be published once in each week for four weeks in two newspapers. This seems to be the only notice to be given to the stockholders or members of the corporation of the proposed movement. There is no provision that such stockholders or members may interpose any objections or be in any manner heard, nor is any way pointed out for the court to proceed in making an inquiry into the facts necessary to be established for a proper adjudication. And yet the object of the proceeding is not only to dissolve the corporation, but to devote the surplus of its property, after paying debts and the expense of the proceeding, to any object or purpose which the trustees may indicate and the court approve.

The class of corporations affected by this bill, is by an amendment of the original law passed in 1881, authorized to hold real estate of the value of two hundred thousand dollars, and personal property to an equal amount.

The property of such institutions is really beneficially vested, I suppose, in the members of the corporation; and it is the duty of the trustees to manage the property and affairs of such corporation for the best interest of the members. They are not put in place to dissolve the corporation, nor to distribute its property. When that becomes proper or desirable, the movement should, in my opinion, be inaugurated by the members of the corporation. At all events, they should have ample opportunity to be heard in such cases before their corporation is dissolved and their property distributed, it may be, to an object or purpose entirely foreign to the design of the corporation.

Another objection to the bill is found in the fact that a mode is already provided for the voluntary dissolution of the corporations described therein by title eleven, chapter seventeen of the Code of Civil Procedure. And if the features of this bill touching the diversion of the property of such institutions should be adopted, they ought to be much better guarded in the interests of the members of the corporation and incorporated in that chapter and title of the Code."

The bill was not passed over the veto.

April 21. To the Senate:

**Veto of a bill entitled "An act to amend section nine of title four of chapter one hundred and twenty-nine of the Laws of eighteen hundred and seventy-two, as amended by section nine of chapter eight hundred and thirteen of the Laws of eighteen hundred and seventy-three, relative to the city of Troy."**

"This bill amends a section of the charter of the city of Troy, which directs that the expense of widening a street shall be assessed upon the property benefited thereby, by adding to said section a provision that if the common council of the city shall order the widening of Jacob and North Third streets, where they intersect, the expense thereof shall be assessed upon the whole city.

The insertion in the charter of a city of provisions which only relate to a single emergency or supposed necessity, and which after the same are answered, become useless surplusage, is exceedingly objectionable. A charter, which is the fundamental law of a municipality, should, ordinarily, contain only general provisions, applicable to all the needs of the city, and should not be amended to suit a single case.

The widening of the streets mentioned, if necessary at all, has been rendered so by the occupancy of one of said streets by the tracks of a railroad company. The effect of the amendment proposed in this bill is to release the said company from a part of the expense of the improvement, which, by the present charter, would be assessed upon it, and charge the same upon all the taxpayers of the city. It seems to me that the corporation which, for nearly twenty years, has enjoyed the privilege of occupying this street with its tracks, should not escape, by special legislation, any part of its share of taxation consequent upon the necessary restoration of such street to its usefulness as a public highway.

I am confirmed in my opinion that this bill should not become a law by the objections of the local authorities of the city of Troy, as represented by its mayor and city attorney, both of whom have protested against the measure."

The bill was not passed over the veto.

April 24. To the Assembly:

**Veto of a bill entitled "An act authorizing the town of Westchester to borrow money to improve highways therein."**

"The bill provides that a sum not exceeding sixty thousand dollars may be borrowed by the town of Westchester at any time within five years, to be applied toward the improvement of such highways as certain commissioners, to be appointed by the supervisor of said town, may direct. It is further provided that the bonds of the town for the money so borrowed shall be issued by the supervisor in such sums as shall be directed by the said commissioners, upon their certificate that the amount for which bonds are required to be issued is due and owing, or that contracts have been made by them for such amount. In case vacancies occur in the commission, the same are to be filled by the surviving members thereof.

The scheme thus provided for this large increase of town indebtedness seems to me to ignore the taxpayers affected thereby, and to be very objectionable. The supervisor creates the commission which dictates the amount to be borrowed, and the time when bonds shall be issued therefor, and selects the localities where the money thus raised shall be spent. I do not see that the people, except as it may be claimed that they are represented by the supervisor, have any hand in the matter except to pay the taxes.

This town has already a large bonded indebtedness and its taxpayers are grievously burdened; for their actual necessities no such expenditures for highway purposes as are contemplated by this bill are required; and in large numbers the inhabitants of the town, who would be compelled to bear the increased taxation, remonstrate against this bill becoming a law.

These reasons seem to abundantly justify my disapproval of the measure."

The bill was not passed over the veto.

April 25. To the Assembly:

**Veto of a bill entitled "An act in relation to the appointment of bridge tenders on swing or lift bridges in the city of Rochester."**

"This bill authorizes the executive board of the city of Rochester to appoint the tenders of the swing or lift bridges over the canals in that city; and provides that if complaint is made by the State officers having charge of the canals that such tenders are not performing their duties satisfactorily, they shall be removed and others appointed by said board.

These bridge tenders are charged with the immediate care and management of the swing and lift bridges constructed over the canals; and it is their duty to draw or lift such bridges to enable all boats navigating the canals to pass. Such bridges are constructed only by consent of the State, as represented by the superintendent of public works; and the sole object of the appointment of bridge tenders is to permit the navigation of the canals, which otherwise would be prevented by these bridges.

Section three of article five of the Constitution of the State provides that persons 'employed in the care and management of the canals' (with certain exceptions which do not include bridge tenders), 'shall be appointed by the superintendent of public works, and be subject to suspension or removal by him.'

I am of the opinion that the duties devolved upon the persons whose appointment is vested in the executive board of the city of Rochester by the terms of the bill under consideration, are such that they should be regarded as 'persons employed in the care and management of the canals,' and that the Constitution does not permit their appointment by any authority except the superintendent of public works.

Chapter 488 of the Laws of 1881, permits the erection of bridges over the canals by towns, cities and villages only with the consent and under the direction of the superintendent of public works, and provides that if by reason of any such bridge being a hoist, lift or swing bridge, the constant attendance of bridge tenders shall be required to manage and work said bridge, the superintendent of public works shall alone have the power of appointment and removal of such tenders.

And the permits given by the superintendent for the erection of such bridges uniformly contain a provision that they shall be maintained and operated under his control and supervision.

It is thus shown to be the policy of the State that these structures, the proper operation of which is so essential to the successful management of the canals, and the careless or improper operation of which might result in damage to individuals, for which claims would be made against the State, should be in charge of its servants and agents selected and approved by its officers.

This is so manifestly proper and prudent that it seems to me very important that the present control of the State over the operation of these bridges should not be impaired."

The bill was not passed over the veto.

April 28. To the Assembly:

**Veto of a bill entitled "An act to amend chapter four hundred of the Laws of eighteen hundred and eighty, entitled 'An act making appropriations for the several judicial district libraries.'"**

"The law which this bill amends appropriated from the funds of the State nearly fifteen thousand dollars for the purchase of books for ten different law libraries, which, from time to time, have been established and are now maintained by the State. The particular section amended by the bill before me appropriates six hundred dollars to be paid annually to each of said libraries. The amendment consists in adding the Orange County Reference Law Library, located at the city of Newburgh, to those attempted to be provided for by the original law. But in the year 1881 the Legislature, instead of regarding the limit of six hundred dollars fixed by its predecessor, again appropriated nearly fifteen thousand dollars for the purchase of books for this class of libraries. In 1882 it appears that but six thousand dollars was appropriated for such purpose, and in 1883 eleven thousand dollars was thus appropriated.

So far as section three of the law of 1880, which is amended by this bill, can be considered as an appropriation, it could not bind, and was not even followed by subsequent Legislatures; and by the terms of the Constitution no money could be paid out of the State treasury pursuant to such law, except within two years from the date of its passage.[h] I consider this section of that law as spent and of no practical effect; and if the amendment thereto proposed by the bill under consideration has any force, it simply operates as an appropriation of six hundred dollars to a law library, which for the first time seeks to gain a place among objects of the same character for which State funds are annually appropriated.

There are seven law libraries owned by the State now in use by the several judges of the Court of Appeals, and there are at least nine others, one located in each judicial district, except the sixth, which seems to have two. It is possible that all are not included in this statement, but it must be agreed, as I think, that when the State maintains sixteen law libraries for the use of its lawyers and judges, such exceedingly questionable generosity should not be extended.''

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[h] Const. 1846, art. 7, § 8.

The bill was not passed over the veto.

April 28. To the Assembly:

**Veto of a bill entitled "An act to extend the operation and effects of chapter forty-six of the Laws of eighteen hundred and forty-eight, entitled 'An act to authorize the formation of corporations for manufacturing, mining, mechanical, chemical, agricultural, horticultural, medical or curative, mercantile or commercial purposes.'"**

"The object of this bill is to promote the formation of corporations for the purpose of operating machinery for securing a uniform standard of time by means of a central clock, regulating and controlling subsidiary clocks, under the provisions of chapter forty of the Laws of 1848, which was originally entitled 'An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes.'

This title was amended in 1866 in such manner as to read as recited in the title to this bill. But inasmuch as the act of 1848 is only mentioned as the law by which this new kind of corporation shall be governed, I think it should be referred to as a means of identification, by its original instead of its amended title. This course has been adopted, I find, in all the laws passed since the change of its title extending its operation to other purposes.

This law of 1848 has been amended so often, and in such a heedless way, that there seems to be quite some difficulty in discovering its exact condition; and I judge by the various notes found at the foot of page 1731, volume two, second edition of the Revised Statutes, that it is not absolutely safe to rely upon it.

In 1875, owing probably to the confusion in which the statutes on this subject were found, a law was passed for the formation of business corporations. This seems to be a plain and simple statute applicable to the formation of nearly every kind of corporation, and I suppose was really intended to take the place of all prior statutes on this subject. Under this law, the corporation sought to be authorized under the bill herewith returned, could be easily and much more safely organized without any legislation on the subject.''

The bill was not passed over the veto.

May 12. To the Assembly:

"I have examined Assembly bill, entitled 'An act in relation to the office of register of the city and county of New York,' and Assembly bill, entitled 'An act in relation to the office of surrogate of the county of New York,' and I am of the opinion that both of them should be recalled for amendment.[19] I am led to make this suggestion for the reason that these bills belong to a class of remedial measures of great importance, and from the enactment of which valuable reforms are anticipated. It is manifest that their good effect should not be jeopardized or diminished by imperfection in their form, or by the omission of any provisions which tend to make them complete and effective.

In the bill relating to the office of register, subdivision sixteen of section four appears to be unintelligible. The language is as follows: 'Every certificate other than that a paper for the copying of which he is entitled to a fee is a copy twenty-five cents.'

I suppose the intention may be expressed in the following words:

'Every certificate other than to a paper, for the copying of which he is entitled to a fee, twenty-five cents.'

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[19] These bills were amended and passed; the surrogate bill becoming chapter 530, and the register bill, chapter 531. [See also memorandum of June 14.]

Section five of the act provides for the giving of a bond for the faithful discharge of his duties by 'the register appointed or elected as successor to the present incumbent of that office in the city and county of New York.'

Of course this should be made to apply to all registers hereafter elected or appointed.

Section ten, in relation to the keeping of accounts, is in the same form, and appears to need the same amendment.

In line nine of section five the word 'clerk' is, by mistake, used instead of 'register,' in quite an important provision.

Sections ten and eleven both require a statement showing, among other things, 'the fees, perquisites and emoluments which the register or his assistants *shall be entitled to demand from any person* for services rendered in his or their official capacity.' There should, I think, be no such provision in the law; but, on the contrary, it should contain a positive direction to the register that he should give no credit to any person for fees, or that he should receive the same in advance and be responsible to the city and county for all fees earned by him.

The plan of this bill is to pay to the register a salary, and have the fees of the office turned into the treasury of the city and county. This officer, thus assured of his salary, will have no personal interest in collecting the fees of his office; and the city should be protected against an accumulation of very doubtful assets comprising numerous accounts against attorneys for register's fees.

Bill No. 467, relating to the office of surrogate, provides in its sixth section that after the passage of this act "the surrogate, the assistants to said surrogate, or other clerks, employes or subordinates in or attached to the office or court of surrogate, shall not charge or receive *to his or their own use and benefit,* or otherwise than for the benefit of said county, any fees, perquisites or emoluments for any services rendered by him or them by virtue of his or their official positions, except as provided in subdivision one of section seven of this act."

Section seven provides that no fees, perquisites or emoluments shall be charged or received by the surrogate, or any of his assistants or subordinates, except as therein specified.

Then follows subdivision one, which is referred to in section six, as fixing the fees that may be charged and received *to their own use* by the surrogate, and his assistants and subordinates, which is in the following words:

'1. When in a case prescribed by law, or in any other case, upon the application of a party, *he* goes to a place other than *his* office, or the court-room where *he* is required to hold court, in order to take testimony, *he* may charge and receive to *his* own use, ten cents for each mile for going and the same sum for returning.'

This is the exact language of subdivision one of section 2566 of the Code of Civil Procedure. But by that section the mileage allowed is confined to the surrogate alone, and not to any assistants or subordinates. It was evidently intended to apply to counties embracing a large area, and to cases when the surrogate might be called upon to travel a considerable distance, involving an expense for which he should be reimbursed.

I can see no propriety in making this applicable even to the surrogate of the city and county of New York; and as it may be claimed that it applies under this bill to the subordinates as well as to the surrogate, it would seem to open the door to abuses.

I think all the provisions of the bill permitting any fees to be received by the surrogate or his subordinates, to his or their own use, should be stricken out, and that the same should be expressly prohibited.

There should also be inserted in this bill, in my judgment, a prohibition against the surrogate giving any credit for his fees and services, and holding him responsible to the city and county for all fees earned in his office.

I have not had an opportunity to examine the other bills in my hands, similar to those referred to, relating to the public offices in the city of New York, with such care as is necessary, to determine whether they contain similar imperfections.

I recommend that these bills, which are above referred to, be recalled for amendment. And in view of the near approach of the final adjournment of the Legislature, I suggest that the other bills of a like character be also recalled or carefully examined by some party familiar with the subjects they embrace, so that fatal defects shall not be discovered when it is too late for amendment."

May 13. To the Senate:

**Veto of a bill entitled "An act extending and supplementing the rights, powers and duties heretofore possessed, conferred and imposed upon the Broadway Underground Railway Company."**

"My objections to this bill can, I think, be better understood after a statement of some of the provisions of the statute which have heretofore been passed, and proceedings which have been taken touching the corporation to which said bill refers.

On the 1st day of June, 1868, an act was passed authorizing seventeen persons therein named 'to lay down, construct and maintain one or more pneumatic tubes in the soil beneath the streets, squares, avenues and public places of the city of New York; and to convey letters, parcels, packages, mails, merchandise and property in and through said tubes for compensation, by means of vehicles, to be run and operated therein by the pneumatic system of propulsion.'

The following provisions were also contained in said statute:

That the said pneumatic tubes should be so constructed as to have a mean interior diameter of not exceeding fifty-four inches.

That in the city of New York they should be located and laid under the supervision and direction of the Croton aqueduct department, at such depth below the surface and in such manner as should prevent any injury to or unnecessary interference with the surface of the streets, or any change or alteration in the existing sewers, water pipes or gas pipes.

That said tubes should not extend through any vault nor under any sidewalk fronting on private property, without the consent of and compensation to the owner of such private property, which compensation should be ascertained and determined, in case the parties could not agree, in the manner provided by the general railroad law.

That the persons named in the act should first lay down and construct one line of said tubes from the post-office in Nassau street, northwardly to Fourteenth street, which should be and continue in successful working operation for the period of three months, as certified by the postmaster, mayor and comptroller of the city of New York, before any other lines of such tubes should be laid down or constructed.

That the Croton aqueduct department should establish and enforce such rules and regulations as to the number of men employed on any and all parts of the work of constructing said tubes, the time of making, keeping open and closing the necessary excavations and the laying of the tubes therein as should prevent, as far as possible, the obstruction of any street, square, avenue or public place, and secure the completion of each part or section of said work with the least possible delay, and that immediately upon such completion the surface and pavements of the streets, avenues, squares and public places should be restored to as good condition as they were before the making of any openings and excavations.

That within thirty days after the passage of the act, a meeting of the persons named therein should be called, at which they might determine to form themselves into a corporation under the act of 1848, entitled 'An act to authorize the formation of corporations for manufacturing, mining, mechanical or chemical purposes,' and that upon the formation thereof, the said corporation should possess all the powers and privileges conferred by said act, and be subject to all the duties and obligations imposed therein not inconsistent with the provisions of the act of 1868. Pursuant to this provision, such a corporation was formed on the eighth day of August, 1868, which was called the 'Beach Pneumatic Transit Company.'

The next year, the act of 1868 was amended in such manner that it was no longer necessary that the pneumatic tubes therein mentioned should be laid under the supervision and direction of the Croton water department, leaving the subject to be governed by such provisions of the act as were left unimpaired by the amending act and by such rules and regulations as should be made by said water department 'not inconsistent with the purposes of this act.'

In 1873 a law was passed giving authority to the Beach Pneumatic Transit Company to construct, maintain and operate an underground railway for the transportation of passengers and property in the city of New York extending from the Battery, or Bowling Green, under Broadway to Madison square, and along various streets and avenues in said act specified. It was provided that this underground railway should be so constructed and maintained by means of tubes of enlarged interior diameter sufficient for the construction of a railway or railways therein.

This law is entitled 'An act supplemental' to the two acts already referred to.

It provides that the tubes therein permitted to be laid shall, as far as practicable, follow the center of the streets, and shall not occupy in the aggregate a greater space than thirty-one feet in width by eighteen feet in height; that the outer walls of said tubes shall not approach within two feet of the curb line nor within eighteen feet of the building line of the street. A board of engineers is provided for, one of whom is named in the bill, and the other two to be appointed by the Governor, who shall see that the said tubes and railways are constructed in a thorough and workmanlike manner, that proper materials are used, that all needful precautions are taken by the company to prevent damages to private property, interruption to travel, and unnecessary interference with the sewers, water pipes and gas pipes, and that sufficient space is provided or allowed to remain, for proper sewerage and the laying of the gas pipes and water pipes, along the route of the tubes.

By this act the corporation is forbidden to interrupt the supply of water or gas or the flow of the sewers, and it is provided that all changes or alterations in the sewers, water pipes or gas pipes that may be necessary, shall be done under the supervision of the department of public works, but at the expense of the company; that during the construction of the works the travel through the streets over said works, and through the streets intersecting the line of said works, shall not be interrupted at any time except by special permission of the department of public works, and the board of engineer commissioners provided for by said act; that in working or excavating the said company shall, at its own cost and expense, make the foundation of every building adjoining or near said excavation firm and secure; that the said corporation shall commence the construction of their works within six months after the passage of the act, and complete the same to Fourteenth street within three years, and the whole work within five years thereafter; that the capital stock of said corporation shall be ten millions of dollars, and that before entering upon the work it shall be all subscribed for, and ten per cent. paid in, or other financial arrangements made by said company to insure the completion of said work; that before the said company shall commence work it shall execute and deliver to the mayor of the city of New York a bond, with sufficient sureties, in such sum as the board of engineer commissioners shall determine, not less than two hundred and fifty thousand nor more than five hundred thousand dollars, conditioned that the said company and its sureties shall be bound to pay to any and all persons or corporations owning lands along the line of the road any and all direct damages and injury that the property of said city, or persons or corporations shall sustain by reason of the construction of said road, and that said company shall restore the streets and avenues to as safe and as good condition as the same were before the commencement of work thereon.

In the year 1874 the name of the corporation was changed from the 'Beach Pneumatic Transit Company' to the 'Broadway Underground Railway Company,' and the time for the completion of its road extended. Said company was also allowed to construct its tunnels and railways one foot larger than was provided by the law of 1873.

In the year 1881 another law was passed still further extending the time for the completion of the work.

These several statutes have been thus referred to for the purpose of showing what protection was furnished the people of the city of New York and the municipality itself against loss and damage when the scheme was to construct a tube fifty-four inches in diameter, and thereafter railway tracks in a tube or tunnel laid below the center of the streets and occupying a space not exceeding thirty-one and thirty-two feet in width and eighteen feet in height.

The bill now under consideration, instead of the appropriation of so small a part of the most important thoroughfare in the city of New York, proposes to excavate next to the house lines a distance of not less than ten feet on each side of Broadway, for the purpose of constructing a sub-surface sidewalk under the walk, as now constructed, and to excavate all the rest of the street between the outer lines of such sub-surface sidewalks to the distance of not less than sixteen feet. The substance and material of the street is to be removed, and in its place it is proposed to put an artificial structure, upon the roof of which is to be supported the surface of a new highway or thoroughfare for ordinary purposes; and beneath this roof are to be constructed the railroad tracks of the company. For the purpose of affording light and air to the road-bed and the sub-surface sidewalks and other subterranean structures of the company, it may keep and maintain open spaces not exceeding six feet in width from and along the house line on each side of the street, providing it shall have or supply necessary means of entrance and exit to and from the surface sidewalks into and out of all buildings along its route. Its trains may be drawn by electric or other motive power not emitting smoke, cinders or steam, causing noise or annoyance. It may excavate any cross street for the purpose of housing or storing its cars and other property, and for removing material in the course of the construction of its works, and may build tramways for that purpose either upon or beneath such cross streets. The company has full power and authority to remove all sewers, water, gas, steam and other pipes, as well as all wires, tubes and other obstructions to the necessary work of the construction of its road-bed and of the sub-surface sidewalks or any part thereof, and shall, at its own expense, remove and place the same within subways to be constructed for their reception along the road-bed or under the sub-surface sidewalks. During the process of construction, the said company may sustain the surface of the sidewalks and streets by either temporary or permanent structures, or may substitute therefor temporary bridges or means of passage for foot passengers and vehicles.

It must be conceded that this bill contemplates a stupendous work involving a very serious interference with the rights of the present occupants and owners of property abutting on the streets of the city, and greatly affecting the interests of the municipality.

Those doing business on Broadway are quite generally occupying, by license from the city or by its sufferance, the space under the present sidewalk for business purposes. For a depth of ten feet, at least, from the surface, this will be taken from them by the operations of this company. An open space of six feet in width may be made by the company between their buildings and the sidewalks fronting them; and they are to content themselves with such means of ingress and exit as shall be furnished them under the provisions of the bill. They are in their business to be subjected to whatever of annoyance may be caused by the operation of the proposed railroad in close proximity. The danger to the foundations of the buildings along the excavation may not be entirely imaginary, though I do not regard it as necessarily serious.

But considering all the real and substantial elements of loss and damage that will ensue, we naturally seek in the bill for some provision requiring the consent of the persons likely to be injuriously affected, before the street in which they have a direct interest is excavated and carried away, and before they are deprived of the other rights and privileges to which they are entitled as abutting owners.

The interests of such owners in the surface of the streets in front of their property, their rights to its appropriation only to the ordinary purposes of its maintenance, are fully recognized by a constitutional provision, which requires the consent of a majority of such owners, or an adjudication by the court, before such streets can be used for the purposes of a street railroad.* It is not easy to distinguish the difference in theory between the interests of abutting owners in the surface of the street and the soil beneath it, especially as against a project to dig up such soil and carry it away. And when we consider that this will result in the actual curtailments of the space used and occupied by such owners for business purposes, it certainly seems that this proceeding should more require their consent than a partial appropriation of the street. And yet we look in vain through this bill to find any provision requiring such consent.

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* Const. 1846, art. 3, § 18, added 1874.

If their consent is not to be obtained, there should surely be ample provision for the payment of all damages they may sustain by reason of the appropriation of the streets which is contemplated by this company.

But the assurance that such payment is to be made does not appear to be very satisfactory. The statute of 1873, which permitted the construction of a railroad in a tube to be laid in the center of the street, provided that the company should ' be liable to the owner or owners of any wall, building, structure, or lands or other property along the route of said railways for any direct damage which they, or either of them, shall sustain by reason of any direct injury caused thereto by the construction of said railway.'

The bill now before me declares that the company ' shall be subject to the same rules and obligations as to injury to private property not inconsistent with this act, as are now provided by law in respect to the construction of its underground railway.'

The act of 1873 also provides that the company shall give a bond in a sum not less than two hundred and fifty thousand nor more than five hundred thousand dollars, which shall be conditioned to pay, among other things, all direct damages or injury that the property of said city or persons or corporations shall sustain by reason of the construction of said road.

Here we have at most the responsibility of the company, and the liability upon the bond above referred to, as the means of compensating for all direct damages or injury — whatever that may mean.

By the law of 1873, the company could not begin work until the whole of its capital stock, amounting to ten million dollars, had been subscribed and ten per cent. thereof paid in in cash, or other financial arrangements had been made by said company to insure the completion of the work; and by the manufacturing law of 1848, under which the corporation was formed, the stockholders and directors were liable for the debts and liabilities of the corporation in certain cases.

But, under the bill now before me, the liability of each stockholder to creditors is declared to be only for such amount as remains unpaid upon the shares of stock held by him; and, as touching the ability of the corporation to refund in damages, it may well be stated that under this bill, before commencing work, it is not necessary that any stock should be paid in, but only that the company shall show that the full amount of the capital stock, *or a sufficient amount thereof has been subscribed,* or other financial arrangements made for commencing within two years and completing within five years from July 1, 1884, the first section of its road, from the Battery, or Bowling Green, through Broadway to Forty-second street.

It does not seem to me that the provision for the payment of private damages, under this bill, is adequate; nor so safe as under the previous law. And yet from the nature of the construction contemplated under that law, much less damage to private parties would ensue, and the apparent responsibility of the corporation does not appear to be improved by a reference to the twelfth section of the bill, which permits the directors to borrow any sum of money they may deem necessary, and to issue the bonds of the company for the sum so borrowed, and mortgage its corporate property rights and franchises to secure the payment of the same.

But if private parties who sustain damage by the construction of the road are inadequately protected, it appears to me that the municipality is also but little regarded.

This work is to be done in its busiest and most important street without any direction or supervision on its part. The commissioners who are to have some supervision, without the control they should have of the work, are to be appointed by the Governor and paid by the constructing company. They are in no way responsible to any departments of the city. The municipality must stand by and see its main thoroughfare excavated and carried away, and another construction substituted for it against its protest.

The same clause of the Constitution which requires the consent of the owners fronting on a street before it can be appropriated to the uses of a street railroad, requires the consent of the local authorities in charge of the street.[1]

But in this bill the principle which underlies that provision is entirely ignored.

The inexpediency and wrong of such a spoliation of the streets, without the consent of the local authorities, is aggravated in this bill by provisions which put the subsurface sidewalks, after their construction, in charge of the city; as I apprehend, make it responsible for their maintenance and care. This is also the case respecting the sewers, water pipes and other property underground of a like nature, which the company is authorized to change and reconstruct.

I cannot think that the provisions of this bill could be carried out without a violation of principle, which should not be permitted.

A large number of the owners of property on Broadway, who would be most seriously affected by this construction, as well as the mayor of the city, protest against the bill.

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[1] Const. 1846, art. 3, § 18, added 1874.

A law has lately been passed, which promises to afford to the citizens of New York better means of travel and transit than they now enjoy.

The scheme proposed by this bill is to a great degree an experiment; and if it is to be tried at this time in the city of New York, it seems to me Broadway should not be selected for its operation.

The bill does not present such safe assurance as it should, that the company will complete the road. A commencement and failure to finish the work would be a great calamity.

And I think many grave doubts exist as to the constitutionality of the bill in more than one of its features.

I am satisfied that the people of the city of New York will not suffer if they wait for the rapid transit which it is represented this bill will secure, until a measure can be prepared and passed which will better protect public and private rights, and inspire more confidence in the success of the undertaking."

The bill was not passed over the veto.

May 14. To the Senate:

**Veto of a bill entitled "An act to amend chapter three hundred and sixty-two of the Laws of eighteen hundred and eighty-one, entitled 'An act supplemental to chapter three hundred and twenty-eight of the Laws of eighteen hundred and eighty,' entitled "An act to establish and maintain a police force in the city of Troy," and chapter seventy-six of the Laws of eighteen hundred and eighty-one, entitled "An act to amend chapter three hundred and twenty-eight of the Laws of eighteen hundred and eighty," entitled 'An act to establish and maintain a police force in the city of Troy.'"**

"The amendment to the police law of the city of Troy contained in this bill permits the board of police commissioners, within twenty days after the passage of the act, to appoint from the present detective force a chief detective, "who shall be subject to the order and control of the superintendent of police, and have charge of and direct and control the detective work of the said city." His annual salary is fixed at fifteen hundred dollars.

Another provision of the same section in which this amendment occurs, authorizes the appointment of a superintendent of police, and declares that 'such superintendent shall have, among other powers and duties, the charge of organizing and directing the detectives of said force.' This is as it should be; and all the representations of those in favor of the amendment have failed to convince me that its enactment would be wise or beneficial, especially while the power vested in the superintendent remains as above stated.

I think a concentration of responsibility and authority in one person is peculiarly desirable in police detective operations. The tendency to a conflict of authority in the case of two officers having the power with which these would be severally invested, if the proposed amendments should be passed, is quite apparent.

The law authorizes the appointment of but four detectives. If one should be made chief detective under this bill there would be but three left in the ranks, with two commanding officers.

It cannot be that this amendment is at all calculated to increase the usefulness and efficiency of the detective force."

The bill was not passed over the veto.

May 14. To the Senate:

**Veto of a bill entitled "An act to authorize the village of Middletown, in the county of Orange, to raise money to construct a village hall."**

"This bill authorizes the board of trustees of the village of Middletown to construct a village hall for the use of the different departments of the village government, and to issue the bonds of the corporation in a sum not exceeding the sum of twenty-five thousand dollars to meet the expense of the same.

By chapter four hundred and eighty-two of the Laws of 1875, the board of supervisors of Orange county have the power to grant to the village of Middletown all the powers which this bill seeks to confer; and the passage of a special statute for that purpose is unnecessary, as well as opposed to sound methods of legislation. The act referred to was framed for the express purpose of remitting such matters to the local authorities; and the boards of supervisors were vested with the requisite authority to deal with them pursuant to a policy which recognized the evils of bringing such purely local measures before the Legislature. Every day's experience confirms my conviction that this policy should be adhered to strictly and consistently, and that general laws to meet the needs of localities should be passed, or amended when found deficient.''

The bill was not passed over the veto.

May 14. To the Assembly:

**Veto of a bill entitled "An act to amend chapter 676 of the Laws of 1881, entitled 'An act to establish a Penal Code.'"**

'' This bill amends that section of the Penal Code which declares what acts shall constitute disturbance of a religious meeting.

The present law specifies certain acts to be such a disturbance, if done within two miles of a place where such religious meeting is held.

This bill proposes to add another and distinct disturbance, in these words:

' Exposing for sale, except in a village or city, within the like distance (two miles of a place where a religious meeting is held) any commodity or property in any other place, inn, store or grocery, than that in which the person so doing shall have usually resided or carried on business, unless with the consent of those who have charge of and conduct such meetings.'

By another section of the Penal Code, the disturbance of a religious meeting is declared to be a misdemeanor; and a misdemeanor may be punished by an imprisonment of one year and a fine of two hundred and fifty dollars.

I am at a loss to discover how the act specified in the amendment proposed can by any possibility disturb a religious meeting. It will be observed that it applies to any locality within two miles of the meeting, except in a city or village; that it is not confined to the sale of liquor, or any other thing that might indirectly produce such disturbance, but includes any 'commodity or property,' and that it embraces all days of the week and all religious meetings, from the quiet assemblage for prayer and praise to the largely attended camp meeting.

The creation of new offenses by declaring acts, innocent in themselves, to be crimes, is serious legislation, and should be supported by abundant justification. It is certainly a startling proposition that a citizen of the State cannot expose for sale any commodity or property which is lawfully the subject of sale at any place where he may lawfully be, simply and solely because a religious meeting is held within two miles of him, unless he has the 'consent of those who have charge of and conduct such meeting.'

It has been suggested to me that the purpose of this bill is to provide a revenue to the promoters of religious meetings by means of license fees to be charged by them for the privilege of selling commodities and property within the prescribed distance of their meeting. I cannot believe this; for if this were so, the title of the bill should be changed so that it would express its real purpose; and its provisions should have no place among the acts that are denounced as disturbances of religious meetings and made criminal.

If any citizen of the State desires to erect a booth or arrange a stall on his own property, or in any other place where he is not a trespasser, for the purpose of vending to the tired and hungry attendants upon a camp meeting or other religious assemblage, such safe and proper refreshments as he may lawfully sell, he should be permitted to do so — provided always that he does this in a place and manner to avoid actual disturbance of any religious assemblage. To forbid him this privilege is unjust and an indefensible infringement of his rights. And to make this privilege dependent upon a license granted by 'those who have charge of and conduct' a religious meeting held two miles away, is a delegation of power which, if exercised at all, should be exercised by the State or some other civil authority."

The bill was not passed over the veto.

May 14. To the Assembly:

**Veto of a bill entitled "An act to amend chapter four hundred and ten of the Laws of eighteen hundred and eighty-two, entitled 'An act to consolidate into one act and to declare the special and local laws affecting public interests in the city of New York, passed July first, eighteen hundred and eighty-two.'"**

"This bill relates to the district courts in the city of New York, and one of its purposes is to increase the jurisdiction of such courts from suits involving two hundred and fifty dollars to such controversies as shall involve five hundred dollars.

This, I think, is unwise. With the other local courts in the city of New York not over-burdened with business, there seems to be no necessity of such increase in the jurisdiction of these courts. They were evidently intended for the adjudication of small claims at moderate expense to suitors. Especially does this change seem undesirable and inexpedient in the light of the fact that by the present law where suits brought in the district courts involve one hundred dollars or more, in such cases the defendant by giving a bond may remove such suit to a higher court for trial.

Another object sought to be gained by this bill is to make the costs in said courts the same in all cases, whereas by the present law costs in an action involving not more than fifty dollars are less than they are in suits for a larger amount.

I think the distinction in this respect now existing is a proper one, and should be maintained.

Another feature of this bill, and one which seems to me very objectionable, permits the justices of these courts, in their discretion, when the amount claimed exceeds two hundred and fifty dollars, to make an additional allowance of costs to the party prevailing in the action of not more than ten per cent. upon the amount claimed in excess of the said sum of two hundred and fifty dollars.

I am thoroughly convinced that the power of courts to grant extra allowances, with its liability to abuse, should not be enlarged, and that it especially should not be extended to tribunals established largely for the determination of disputes between people of moderate means.''

The bill was not passed over the veto.

May 14. To the Assembly:

**Veto of a bill entitled "An act to authorize the board of supervisors of Orleans county to audit claims for material used in constructing the county poor-house in said county."**

"If the parties referred to in this bill have claims against the county of Orleans, the board of supervisors not only have the power, but it is their duty to audit and adjust such claims, which duty may be enforced by the courts.

If the claimants have no valid demand against the county, the payment of any public money to them would amount to a simple gratuity, which is prohibited by section eleven of article eight of the Constitution, in these words:

'No county, city, town or village shall hereafter give any money or property, or loan its money or credit to, or in aid of, any individual, association or corporation.'

I am informed that the persons for whose benefit the bill under consideration was prepared, furnished materials to the builder of the poor-house employed by the county, and that he has been paid the amount of his contract, though he has neglected to pay for such material. This presents, perhaps, a case of hardship, but if the county has paid the proper party for the work done, according to its contract, there is no reason why it should settle claims against its contractor, for which it is in no way liable.

Those who hold the people's money in trust should be just — not generous."

The bill was not passed over the veto.

May 14. To the Assembly:

**Veto of a bill entitled "An act to amend an act entitled 'An act to amend the charter of the village of Carthage, Jefferson county.'"**

"This bill amends the charter of the village of Carthage by providing that 'the board of trustees may, and they are hereby authorized to, grant any and all licenses for the sale of spirituous and malt liquors within the corporate limits of said village, with the same powers and subject to all existing laws applicable to excise commissioners of towns under the general act.'

This village is within the town of Wilna, which town is, of course, subject to the general law of the State, which permits its inhabitants to select its excise commissioners, and by such selection to determine the extent to which liquor shall be sold within its limits. Such commissioners were chosen at the last town meeting by all its electors, including those within the village of Carthage.

The proposition contained in the bill is to take from these commissioners, so far as the village of Carthage is concerned, the duties which they were specially elected to perform, and devolve them upon the trustees of the village, who were chosen without any reference to their having such matters in charge. In this way the electors of the village are not permitted, for the time being, to exercise their right of local option — as they are entitled to do by the general law.

The amendment, if it becomes a law, would allow the electors of the village of Carthage to vote for excise commissioners for the town of Wilna as before; but when elected such commissioners could not act within the village. If the people of the town, exclusive of the village, are the only persons affected by the selection of these officers, they alone should elect them.

A sufficient objection to this bill is found in the fact that it is an attempt to relieve a particular locality from the operation of a general law of the State, and belongs to a class of special legislation particularly objectionable."

The bill was not passed over the veto.

May 16. To the Senate:

**Veto of a bill entitled "An act to provide compensation for the performance of the duties of captain of the port of New York and harbor-masters of the port of New York, since May twenty-fourth, eighteen hundred and eighty-three."** [20]

"This bill directs the payment from the State treasury of the sum of thirty-three thousand dollars, or so much as may be necessary to compensate Chester S. Cole and other parties therein named, who, it is declared, have acted as captain of the port of New York or harbor-masters since May 24, 1883.

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[20] The bill was not passed over the veto. An act was passed in 1885, chapter 238, authorizing the board of claims to hear and determine the claims of Chester S. Cole and others for services as captain of the port of New York and harbor-masters. The act legalized the services performed by the captain and harbor-masters from May 24, 1883, to May 24, 1884, but the offices were to be deemed vacant after the last date. The act was sustained in Cole v. State (1886), 102 N. Y. 48, where it was held among other things that the allowance made to these officers could not be deemed to be for extra compensation.

By chapter 487 of the Laws of 1862, the statutes in relation to the captain of the port and harbor-masters were revised, and a complete system for the government and regulation of these officers was adopted.

The first declaration of that law is as follows:

'The Governor shall appoint, by and with the consent of the Senate, an officer to be called captain of the port of New York, and to assist him, subordinate to his directions, eleven harbor-masters.'

And it ends with this distinct provision:

'All acts heretofore existing relating to the captain of the port or to harbor-masters of the port of New York are hereby repealed.'

The persons for whose benefit the bill before me has been prepared, were all appointed since the passage of the law above referred to and pursuant to its provisions. Six of them were so appointed in May, 1882, and the remainder at various dates prior to that time, one of them having been made a harbor-master in the year 1873.

The fees which, by the Laws of 1862, these officers were declared entitled to charge and receive for their services were, in 1876, adjudged by the Supreme Court of the United States illegal.[1] Notwithstanding this decision, the harbor-masters continued to receive such fees under the guise of voluntary payments, until the year 1883.

On the fourth day of May in that year, the Legislature passed a law entitled 'An act to provide for the appointment of a captain of the port of New York and harbor-masters of the port of New York, and defining and regulating the powers and duties and compensation of said officers, and repealing chapter four hundred and eighty-seven of the Laws of eighteen hundred and sixty-two.'

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[1] See Inman S.S. Co. v. Tinker (1876), 94 U. S. 238.

This statute provides for the appointment of a captain of the port and eleven harbor-masters by the Governor, by and with the consent of the Senate, who, instead of the illegal fees which they had theretofore collected, should be paid annual salaries by the State.

This law contains all the provisions necessary to create an entirely new system, and its last section repealed the statute of 1862 above recited, and abolished the offices thereby created in the following terms:

'Chapter four hundred and eighty-seven of the Laws of eighteen hundred and sixty-two, entitled 'An act defining and regulating the powers, duties and compensation of the captain of the port and harbor-masters of the port of New York,' is hereby repealed, and the offices thereby created are abolished, and all acts or parts of acts which are inconsistent with this act are hereby repealed.'

Thirty-three thousand dollars were appropriated by the terms of the law to pay the salaries of the captain of the port and harbor-masters as therein fixed.

As required by this statute, nominations to fill the offices thereby created, were on the 4th day of May, 1883, sent to the Senate, but the same were not confirmed by that body.

It is claimed that notwithstanding the distinct legislation above recited, and the repeal of the law of 1862, that the persons appointed under the law thus repealed have continued to perform the duties attached to these offices; and the bill before me directs the payment to them of the money appropriated to pay the salaries provided for by the act of 1883.

It was my belief before that law was passed, that all the duties required of the captain of the port and harbor-masters could be properly and efficiently performed under the supervision of the department of docks in the city of New York, and I am still of that opinion. But when the act of

1883 was presented to me, I had but the choice of allowing the old officers to remain with no way of collecting compensation, except by the exaction of illegal fees, or approve a bill providing for the abolition of the offices as then existing and the appointment of incumbents to be paid by the State.

The latter course was adopted, and the law took effect, though by the refusal of the Senate to confirm, the new offices were not filled.

In this condition of affairs, the dock department, by virtue of the power vested in it by statutes then existing, undertook the performance of the duties which had theretofore been performed by the captain of the port and harbor-masters.

At a meeting of the dock commissioners, held on the 9th day of May, 1883, five days after the nominees for harbor-masters failed of confirmation, preliminary steps were taken to assume the proposed new duties. On the eleventh day of May, another meeting was held, which, upon the invitation of the dock department, was attended by representatives of the Produce Exchange, the Maritime Exchange, the Chamber of Commerce, the Board of Trade and Transportation and two other exchanges. At this meeting the subject seems to have been further considered, and on the eleventh day of July the water front of the city was divided by the said dock commissioners into nine districts, and a dock-master assigned to each district, at a salary of one thousand five hundred dollars per annum.

This action was taken by the department, as declared in their resolutions passed creating such districts and appointing such dock-masters, for the purpose, among other things, of ' rendering necessary facilities for the prompt berthing of vessels ' at the wharves; and it was declared that the dock-masters should ' perform such duties and render such services in relation to the supervision, regulation and occupation of the wharf property and water fronts in their respective districts as the laws of the United States and of the State of New York, the ordinances of the city of New York and the by-laws of this board and its rules or orders shall or may require, prescribe or direct.'

All this appears from the proceedings of the dock department, duly certified and now in my possession.

It has been represented to me, from time to time, since the first movement was made by the dock department in this direction, that the duties theretofore performed by the harbor-masters were being performed by these dock-masters, to the entire satisfaction of all interests affected.

In response to several specific questions addressed to the dock department, I received in the month of November, 1883, a communication signed by the president of that department, detailing the services performed by the dock-masters in the matter of berthing vessels, and emphatically expressing the opinion that such duties could be satisfactorily performed under the direction of said department, without expense to the State or taxing the commerce of the port.

I was furnished in the month of January, 1884, with copies of the reports of the several dock-masters to the commissioners. If these are to be relied on, they establish the fact that nearly all the berthing of vessels since July, 1883, has been done by such dock-masters.

I herewith transmit to the Senate copies of these documents.

An examination of the testimony taken by the committee of the Senate which investigated these matters, develops the fact that both the former harbor-masters and the dock-masters claimed to have performed the duties appertaining to the office of harbor-masters.

In point of fact, all who are acquainted with the condition of things in the port of New York, are aware that there is but little for anybody to do in the way of berthing vessels.

There is an important difference between these two classes of persons, who claim to have performed their duties.

The dock-masters were directed to perform them, and the harbor-masters knew they had no right after the 24th day of May, 1883, to interfere with them.

That the law of 1862 repealed all former laws on the subject of the appointment and compensation of harbor-masters is entirely certain, if the English language means anything. And if these harbor-masters did not hold office under that law they were not officers.

And it is just as certain that the law of 1883 repealed the law of 1862, and abolished the offices thereby created.

This is the only meaning that can be given to the language of these statutes.

And if there had been no express words to that effect in these laws, the result would have been the same; for it is a well settled rule in the construction of statutes laid down by the highest court in the State, that 'when a later statute not purporting to amend a former one covers the same subject, and was plainly intended to furnish the only law upon the subject, the former statute must be held repealed by necessary implication.' This language is quoted from the opinion of the Court of Appeals in the case of Heckmann against Pinckney, reported in volume 81 of the New York Reports, at page 211.

These harbor-masters were not taken by surprise by the passage of the act of 1883, as every member of the last Legislature is well aware. They knew its effect and the intention of the Legislature in its enactment. And it may be safely asserted, I think, that they were not mere idle spectators of the passage of the law or the proceedings that led to the failure of the attempt to fill the offices thereby created.

In June, 1883, a month after the passage of the law of that year, the captain of the port, in a suit brought by him in behalf of the harbor-masters for a penalty, applied to the court for leave to discontinue the action *upon the ground* that by that very law the offices held by him and his associates had been abolished; *and for that reason and no other* the court granted the application and decided in the plainest terms that these officers were appointed under the law of 1862, and that on 'May 4, 1883, the act under which the plaintiff and his associates derived their authority was repealed, and the offices created by the said act were abolished.'

The decision of the court on this application and the opinion giving the reasons therefor are reported in Howard's Practice Reports, volume 65, at page 520.[k]

It is only when they seek to obtain the money which was appropriated for those whom it was intended should succeed them, that they take the opposite ground and put forth the attenuated pretext that they remained in office and performed services in the employ of the State.

If it be true that their terms ended when the law of 1883 took effect and that the dock-masters were duly designated to perform their duties, it follows that the harbor-masters, after that date, were not employes of the State; and in performing or attempting to perform such duties, they were not even volunteers, but usurpers.

No one claims that these persons were acting under the law of 1883. On the contrary, they insist that they were acting under some previous statute, which the law of 1883 did not repeal. There was no salary attached to the office prior to the last named act, and no fixed measure of compensation, and it is quite clear that the only persons entitled to the salary provided in that statute are those holding office under it.

But the bill under consideration provides that the parties named shall be paid for the period between the 24th day of

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[k] Cole v. Rose.

May, 1883, when the law of that year took effect, and the day that this bill shall become a law, at the rate of the annual salaries provided by the law of 1883.

This determination by the Legislature of the amount due these persons for their services is beyond all question a violation of section nineteen of article three of the Constitution, which is in the following words:

'The Legislature shall neither audit nor allow any private claim or account against the State, but may appropriate money to pay such claims as shall have been audited and allowed according to law.'

And on the theory that these persons are in office under a law passed prior to that of 1883, and to which no salary was attached, I am of the opinion that this bill is obnoxious to the provision of the Constitution which prohibits the passage of any private or local bill '*creating*, increasing or decreasing fees, percentage or allowances of public officers during the term for which said officers are elected or appointed,'[l] as well as another provision that declares the Legislature shall not 'grant any extra compensation to any public officer, servant, agent or contractor.'[m]

No pretense is made that the persons named in this bill performed services for the State blindly, or in the expectation of compensation under the law of 1883 which abolished their offices. A representative of theirs was early informed by at least one of the officers of the State, that such a thing could not be anticipated; and the Attorney-General was at hand to advise them of their legal rights.

It may further be here suggested, that if a claim exists against the State in favor of these parties, upon anything or within any rule of law or right, a tribunal has been established for its ascertainment and adjudication, the door of which is open to any citizen.

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[l] Const. 1846, art. 3, § 18, added 1874.

[m] Const. 1846, art. 3, § 24, am. 1874.

The people have an interest in the determination of the question whether their representatives in the Legislature have the power to dispense with the services of its appointed servants when no longer needed; and whether the sum of nearly or quite thirty-three thousand dollars shall be paid by the taxpayers of the State, upon claims if not fictitious, greatly exaggerated, and in behalf of parties who, in defiance of express legislation, and against the protest of the State, have chosen to regard themselves still in the public service.''

The bill was not passed over the veto.

May 16. The Legislature adjourned without day.

## MEMORANDUMS FILED WITH BILLS BEFORE THE ADJOURNMENT OF THE LEGISLATURE.

March 17.

**Memorandum filed with Assembly bill, chap. 43, conferring additional power upon the Mayor of New York. Approved.**

'' The interest which has been aroused regarding the merits of this bill, and quite a determined hostility which has been developed on the part of those entitled to respectful consideration, appear to justify a brief reference to the principles and purposes which seem to me to be involved in the measure, and an incidental statement of the process of thought by which I have been led to approve the same.

The opponents of the bill have invoked the inviolability of the right of the people to rule themselves, and have insisted upon the preservation of a wise distribution of power among the different branches of government; and I have listened to solemn warning against the subversive tendency of the concentration of power in municipal rule, and the destructive consequences of any encroachment upon the people's rights and prerogatives.

I hope I have not entirely misconceived the scope and reach of this bill; but it seems to me that my determination as to whether or not it should become a law does not depend upon the reverence I entertain for such fundamental principles.

The question is not whether certain officers heretofore elected by the people of the city of New York shall, under the provisions of a new law, be appointed. The transfer of power from an election by the people to an appointment by other authority, has already been made.

The present charter of the city provides that the mayor ' shall nominate and by and with the consent of the board of aldermen, appoint the heads of departments.'

The bill under consideration provides that after the first day of January, 1885, ' all appointments to office in the city of New York now made by the mayor and confirmed by the board of aldermen, shall be made by the mayor without such confirmation.'

The change proposed is clearly apparent.

By the present charter the mayor, elected by all the people of the city, if a majority of twenty-four aldermen elected by the voters of twenty-four separate districts concur with him, may appoint the administrative officers, who shall have charge and management of the city departments.

The bill presented for my action allows the mayor alone to appoint these officers. This authority is not conferred upon the mayor now in office who was chosen without anticipation on the part of the people who elected him that he should exercise this power, but upon the incoming mayor who, after the passage of the act, shall be elected with the full knowledge on the part of the people at the time they cast their votes, that they are constituting an agent to act for them in the selection of certain other city officers.

This selection under either statute is delegated by the people. In the one case it is exercised by the chief executive acting with twenty-four officers representing as many different sections of the municipality; in the other by the chief executive alone.

I cannot see that any principle of democratic rule is more violated in the one case than in the other. It appears to be a mere change of instrumentalities.

It will hardly do to say that because the aldermen are elected annually, and the mayor every two years, that the former are nearer the people and more especially their representatives. The difference in their terms is not sufficient to make a distinction in their direct relations to the citizen.

Nor are the rights of the people to self-government in theory and principle better protected when the power of appointment is vested in twenty-five men, twenty-four of whom are responsible only to their constituents in their respective districts, than when this power is put in the hands of one man elected by all the people of the municipality with particular reference to the exercise of such power. Indeed in the present condition of affairs, if disagreement arises between the mayor and the aldermen, the selection of officers by the representatives of all the people, might be defeated by the adverse action of thirteen representatives of thirteen aldermanic districts. And it is perfectly apparent that these thirteen might, and often would, represent a decided minority of the people of the municipality.

It cannot be claimed that an arrangement which permits such a result is pre-eminently democratic.

It has been urged that the proposed change is opposed to the principle of home rule. If it is intended to claim that the officers, the creation of which is provided for, should be elected, it has no relevancy; for that question is not in any manner presented for my determination. And it surely cannot be said that the doctrine of home rule prevents any change by the Legislature of the organic law of municipalities. The people of the city cannot themselves make such change; and if legislative aid cannot be invoked to that end it follows that abuses, flagrant and increasing, must be continued, and existing charter provisions, the inadequacy of which for the protection and prosperity of the people is freely admitted, must be perpetuated. It is the interference of the Legislature with the administration of municipal government, by agencies arbitrarily created by legislative enactment, and the assumption by the lawmaking power of the State, of the right to regulate such details of city government as are, or should be, under the supervision of local authorities, that should be condemned as a violation of the doctrine of home rule.

In any event I am convinced that I should not disapprove the bill before me on the ground that it violates any principle which is now recognized and exemplified in the government of the city of New York.

I am also satisfied that as between the system now prevailing and that proposed, expediency and a close regard to improved municipal administration lead to my approval of the measure.

If the chief executive of the city is to be held responsible for its order and good government, he should not be hampered by any interference with his selection of subordinate administrative officers; nor should he be permitted to find in a divided responsibility an excuse for any neglect of the best interests of the people.

The plea should never be heard that a bad nomination had been made because it was the only one that could secure confirmation.

No instance has been cited, in which a bad appointment has been prevented by the refusal of the board of aldermen of the city of New York to confirm a nomination.

An absolute and undivided responsibility on the part of the appointing power accords with correct business principles, the application of which to public affairs will always, I believe, direct the way to good administration and the protection of the people's interests.

The intelligence and watchfulness of the citizens of New York should certainly furnish a safe guaranty that the duties and powers devolved by this legislation upon their chosen representative will be well and wisely bestowed; and if they err or are betrayed, their remedy is close at hand.

I can hardly realize the unprincipled boldness of the man who would accept at the hands of his neighbors this sacred trust, and standing alone in the full light of public observation, should willfully prostitute his powers and defy the will of the people.

To say that such a man could, by such means, perpetuate his wicked rule, concedes either that the people are vile, or that self-government is a deplorable failure.

It was claimed, that because some of these appointees become members of the board of estimate and apportionment, which determines very largely the amount of taxation, therefore the power to select them should not be given to the mayor. If the question presented was whether officials having such important duties and functions should be elected by the people or appointed, such a consideration might well be urged in favor of their election. But they are now appointed and they will remain appointive whether the proposed bill should be rejected or approved. This being the situation, the importance of the duties to be performed by these officials, has to do with the care to be exercised in their selection, rather than with the choice between the two modes of appointment which are under consideration.

For some time prior to the year 1872, these appointments were made by the mayor without confirmation, as is contemplated by the bill now before me. In that year a measure passed the Legislature giving the power of appointment to the common council. The chief executive of the State at that time was a careful and thorough student of municipal affairs, having large and varied experience in public life. He refused to approve the bill, on the ground that it was a departure from the principle which should be applied to the administration of the affairs of the city and for the reason that the mayor should be permitted to appoint the subordinate administrative officers without the interference of any other authority.*

This reference to the treatment of the subject by one of my distinguished predecessors in office, affords me the opportunity to quote from his able and vigorous veto message which he sent to the Legislature on that occasion. He said:

'Nowhere on this continent is it so essentially a condition of good government as in the city of New York, that the chief executive officer should be clothed with ample powers, have full control over subordinate administrative departments, and so be subject to an undivided responsibility to the people and to public opinion for all errors, short-comings and wrong-doings by subordinate officers.'

He also said:

'Give to the city a chief executive, with full power to appoint all heads of administrative departments. Let him have power to remove his subordinates, being required to publicly assign his reason.'

He further declared:

'The members of the common council, in New York, will exert all the influence over appointments which is consistent with the public good, without having the legal power of appointment *or any part of it,* vested in their hands.'

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* For Governor Hoffman's veto of the New York charter bill, see *ante,* vol. 6, p. 453.

In 1876, after four added years of reflection and observation, he said, in a public address, when suggesting a scheme of municipal government:

'Have, therefore, no provision in your charter requiring the consent of the common council to the mayor's appointments of heads of departments; *that only opens the way for dictation by the council or for bargains.* This is not the way to get good men nor to fix the full responsibility for mal-administration upon the people's chosen prime minister.'

These are the utterances of one who during two terms had been mayor of the city of New York and for two terms recorder of that city; and who for four years had been governor of the State.

No testimony, it seems to me, could be more satisfactory and convincing.

It is objected that this bill does not go far enough, and that there should be a re-arrangement of the terms of these officers; also that some of them should be made elective. This is undoubtedly true; and I shall be glad to approve further judicious legislation supplementary to this, which shall make the change more valuable and surround it with safeguards in the interests of the citizens. But such further legislation should be well digested and conservative, and above all not proposed for the purpose of gaining a mere partisan advantage.

I have not referred to the pernicious practices which the present mode of making appointments in the city of New York engenders, nor to the constantly recurring bad results for which it is responsible. They are in the plain sight of every citizen of the State.

I believe the change made by the provisions of this bill gives opportunity for an improvement in the administration of municipal affairs; and I am satisfied that the measure violates no right of the people of the locality affected, which they now enjoy. But the best opportunities will be lost and the most perfect plan of city government will fail, unless the people recognize their responsibilities and appreciate and realize the privileges and duties of citizenship. With the most carefully devised charter, and with all the protection which legislative enactments can afford them, the people of the city of New York will not secure a wise and economical rule until those having the most at stake determine to actively interest themselves in the conduct of municipal affairs.''

May 6.

**Memorandum filed with Senate bill, chap. 252, entitled "An act to provide for the construction, extension, maintenance and operation of street surface railroads and branches thereof in cities, towns and villages." Approved.**

'' This bill, in its various stages, has given rise to exceptional discussion, and the hopes and expectations of many people regarding the action of the Legislature and of the executive in disposing of the measure have given me proof that extensive private interests are involved. Painful rumors have been rife touching the methods employed by rival parties to accomplish legislative results. These, I hope, are baseless, but they have, I fear, led many honest men to believe that the measure is wholly iniquitous and vicious. I am inclined, for their information, to state, perhaps imperfectly, but as briefly as possible, the general features of the bill and some considerations which have constrained me to approve the same.

The Constitution of the State prohibits the passage by the Legislature of any private or local bill 'granting to any corporation, association or individual the right to lay down railroad tracks.'[a]

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[a] Const. 1846, art. 3, § 18, added 1874.

It is also therein provided that the Legislature shall pass general laws providing for the cases enumerated in the section containing the above prohibition, and this requirement is supplemented by the following restriction:

'But no law shall authorize the construction or operation of a street railroad except upon the condition that the consent of the owners of one-half in value of the property bounded on, and the consent also of the local authorities having control of that portion of the street or highway upon which it is proposed to construct or operate such railroad be first obtained, as in case the consent of such property owners cannot be obtained, the General Term of the Supreme Court in the district in which it is proposed to be constructed may, upon application, appoint three commissioners, who shall determine, after a hearing of all parties interested, whether such railroad ought to be constructed or operated, and their determination, confirmed by the court, may be taken in lieu of the consent of the property owners.'

It is apparent that any law which permits the laying down of a street railroad track must be general in its character, and not 'private or local.'

It is also quite plain that, under the Constitution, the duty is enjoined upon the Legislature to provide, by law, for the construction of street railroads, and that any law passed for that purpose must be in accordance with the specifications of the Constitution above quoted.

Not only is it the duty enjoined by the Constitution upon the Legislature to provide the people of the entire State with laws under which this means of convenient transit may be furnished them, but the necessity of such legislation is freely conceded. Every year efforts have been made to supply this want, but the apparent impossibility of freeing measures, introduced or passed, ostensibly for that purpose, from objectionable features, have caused their miscarriage.

The result of the last attempt in this direction is now presented to me for official action. I cannot avoid the conviction that it is my duty to examine this bill uninfluenced by any prejudices which might well be aroused from the alleged circumstances connected with its passage, and without giving undue weight to certain local and private interests; and if, upon a careful consideration of all the provisions of the bill, it seems to me to be drawn in conformity to constitutional requirements, and to be a measure which all the people of the State need and are entitled to at the hands of the Legislature, I conceive it to be an obligation resting on me to give it effect, provided, always, that it does not violate any private rights, fixed and vested.

On the 29th day of May, 1883, a bill which had been passed by the Legislature, and which purported to be a general bill authorizing the construction of street railways, was disapproved for the reason that it seemed to me to contain provisions calculated to subserve special interests instead of the welfare of the whole people, and appeared to be constructed with but little reference to the territory of the entire State.* In the memorandum filed with the disapproval of the bill, I fully committed myself to the statement that a general law providing for the construction of street railroads should be enacted, but in connection with such statement, used the following language:

'It cannot be difficult to frame a bill which in spirit, as well as in strict construction, would be a general law, protecting all localities alike, and avoiding the evils sure to follow a further attempt, under the guise of a general statute, to answer only private and local purposes.'

The bill under consideration seems to me to nearly fulfill the requirements above indicated, and to meet the demand for a law permitting the extension of street railroad facili-

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**Ante*, p. 894.

ties throughout the State. The objectionable features of the bill, disapproved in 1883, appear to be wholly eliminated.

The consent of the local authorities and the property owners upon the street are not available unless they are obtained after the passage of the act. This is not only just to the local authorities and present property owners, but it places all those desiring to construct railroads under the act upon an equal footing. No consent heretofore obtained under different circumstances from the predecessors of local authorities or owners can be made available, as they ought not.

The provision requiring the public authorities to give fourteen days' notice in two newspapers before acting upon any application for consent to the construction or extension of a road is a prudent and valuable feature of the bill, taken in connection with the provision that, at the option of the authorities of any city or village, the franchise asked for may be sold at auction. The publicity thus given to the proposed enterprise, if it is deemed of value, will stimulate competition and prevent the local authorities from giving away a franchise which should be sold to the highest bidder.

The tax which may be imposed upon the gross earnings of roads constructed or extended in cities and villages, to be paid into the treasury of such cities and villages, and the stringent provisions contained in the bill to compel its prompt payments, commend the measure as one likely to yield to the people of the localities a substantial return for the franchises conferred.

The power given to the local authorities to make reasonable regulations as to rate of speed, mode of use of tracks, and the removal of snow and ice, and to enforce compliance therewith under heavy penalties, supplies in this bill an element of local control not heretofore so completely provided for, and manifestly essential for the protection of the public.

The limitation of fare to five cents on all roads to be constructed under the act, or to the present authorized rates upon such as have already been constructed, and their extensions, gives to the public the benefit of carriage on all extensions of existing roads without additional fare, and provides a cheap maximum rate for all new roads.

The provision that roads may use each other's tracks and lines for a distance of one thousand feet is just, and will prevent existing roads from unreasonably obstructing the completion of new ones, which require the use of the tracks of such companies to connect parts of the proposed new line. A less distance would prevent new roads from using existing tracks for a sufficient distance to pass long blocks.

All street surface railroad companies are permitted by the act to use any kind of motive power except locomotive steam power. Thus the competition between horse roads and cable roads and roads seeking to introduce other motive power, except the steam locomotive, is left free and open to the choice of the local authorities and the property owners.

A further detailed statement of the provisions of this bill need not here be given, except as they are involved in the objections which are urged against it.

It is said that the consent of those owning one-half of the lineal feet fronting on the street in which the road is proposed, as well as those owning one-half in value, should be required; that the public interest in the city of New York would be better protected if the consent of the commissioners of the sinking fund or some other board should be required, instead of the board of aldermen, and that Fifth avenue and Broadway should be exempted from the bill.

The answer to such objection is at hand. The bill follows the exact language of the amended Constitution in these respects. There would be no safety in doing less. And, as far as the objection touching the local authorities, whose consent is necessary, is concerned, the law now gives to the common council of the city of New York power 'to regulate the use of the streets, highways, roads and public places, by foot passengers, animals, vehicles, cars and locomotives.' As long as this remains the law, and as long as the Constitution requires that 'the consent of the local authorities having control' of the street shall be obtained, it is hard to see how the consent of any other authority than the common council would comply with the Constitution.° Waiving the question of the legal effect of the exemption of any street from the operation of the acts, I think such an exception would neither be consistent nor expedient.

The objection that existing roads should pay a percentage on the receipts from their entire line in case of an extension, it seems to me, is not tenable. Their existing lines were not built in contemplation of any such tax, and if they are extended under the act, it is more just and equitable to charge them with a tax on some portion of their receipts than on the whole. I know of no more fixed and definite rate than to put the tax upon such a proportion of their receipts as their extension bears to the entire line. This is the rule adopted in the act.

It is alleged that the bill permits a street railroad to be laid out and constructed along public parks, with the consent of the local authorities and one-half only of the property owners on the opposite side of such parks. This is a misapprehension. The consent of the owners opposite is in addition to the consent required in other sections of the bill, and by the Constitution.

Objection is made that a company may, under the consent of the local authorities, occupy a street and delay the completion of its road unreasonably, in the meantime excluding other like enterprises. But it seems to me this bill guards with great care against such a state of things.

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° Const. 1846, art. 3, § 18, added 1874.

All consent must be obtained after the passage of the act. Any consent given by the local authorities shall cease and determine at the expiration of one year, unless prior to that time the company shall have obtained and filed the necessary consents of the property owners or the determination of the commissioners provided for by the Constitution, in lieu thereof. I do not understand that such company can occupy a street at all until such consents are both obtained. It must begin the construction of its road within one year, and complete it within three years from the time of giving such consents, or its rights, privileges and franchises acquired under the act shall cease and determine. During the pendency of legal proceedings the Supreme Court is given power to extend the period for the performance of any of the required acts. Of course, this means the performance of any act which may be prevented by legal proceedings. I fail to see any valid objection to granting an extension in such a case or vesting the power to do so in the court.

Another objection opposed to the bill is based upon the language of its fifteenth section, which permits any street surface railroad to lease or transfer its rights, subject to all of its obligations, to run upon or use any portion of its tracks, to any other street surface railroad company which is authorized to run upon such routes, upon such terms as shall be agreed upon by their board of directors, subject to the approval of their stockholders. If no such section were in the bill, I am of the opinion that such leases or transfers could be made by the directors alone under a law which was passed as long ago as 1839. It is wise and safe to give the stockholders a voice in the matter.

It is strongly urged that the bill should oblige the local authorities, in all cases, to put these franchises up at auction, and sell the same to the highest bidder. Such a provision might have resulted in no harm, though throughout the State in a large majority of cases, the price bid would have been nominal. The proposition that the sale at auction should be obligatory, gains much of its supposed force from the contemplation of the condition of affairs in the city of New York. But this legislation is for the entire State; and with the advertisement of application for franchises provided for in the bill, and the competition which would follow, if the same were of value, and with a close regard on the part of the local authorities to the interests of the people which they represent, the localities, I think, will be sufficiently protected. If the local authorities are determined to cheat and defraud their constituents by refusing to put up a valuable franchise at auction, they must, under this bill, do it in the broad light of day, and with a brazenness and boldness that would find a way to evade the most carefully framed law.

The last objection which I shall notice is to section sixteen of the bill, which prohibits the construction of any street railroad to run in whole or in part upon the surface of any street, under the provisions of chapter six hundred and six of the Laws of 1875. This is commonly called the rapid transit act, and though it has been in force nine years, with no other law for the construction of surface street railroads, none has ever been built under that statute. It has, I think, been generally supposed that its provisions only authorized, or, at least, were only intended to authorize, the construction of elevated or underground roads. There has lately been formed, in the city of New York, a company for the purpose of introducing the cable system of propelling street cars in that city. At the instance of this company, I suppose, commissioners have been appointed by the mayor of the city of New York, under the rapid transit act, who have gone so far as to lay out routes in many of the streets of the city, amounting to about seventy-two miles, for the occupancy of the cable company. These proceedings, if carried to completion, would probably give to this company the occupancy of so many streets that any remaining routes would be of little comparative value. Its claim now is, that this bill, by preventing it from proceeding further under the act of 1875, inflicts upon it a great wrong and deprives it of rights to which it is fairly entitled.

Of course, these proceedings have not gone far enough to give this company any legal claim; but if the law under which it has proceeded is applicable to surface roads, and if in good faith they have done these things, which entitle it equitably to retain whatever advantages it has acquired, its claims should not be lightly disregarded.

On the other hand, a measure as complete as this bill, now before me, so well suited to the wants of all the people of the State, and so necessary to their convenience, embracing all interests except those of the cable company, should not be lost or destroyed, save for the most potential reasons.

This company has, under the provisions of this bill, the same opportunity to organize, for the purpose of introducing their system upon the streets of the city, as any other company that may be formed using a different motive power. It has but to surrender the uncertain advantages which they may have acquired under a law of doubtful applicability to their professed wants, and proceed under a law which will give them a safe and sure footing. With this company in the field, claiming under rights derived from proceedings already had, litigation and dispute between it and corporations formed under the new law would surely follow, resulting in delaying construction by either company, and consequent inconvenience to the citizens. There is, I think, an advantage in having but one law under which this class of corporations shall be organized. Their obligations to the people and to the State under a single system are more definite and certain, and better understood.

If the section thus strongly objected to had been omitted, I am by no means sure I would have refused my signature to the bill on that account, but I do not think I am justified upon a full consideration of all the circumstances, in disapproving the bill as now presented."

## THIRTY-DAY BILLS.

June 11.

**Veto of items of appropriation contained in Assembly bill, chap. 512, entitled "An act appropriating money to pay certain awards made by the Canal Appraisers and the Board of Claims, with the interest thereon, and to pay counsel and witnesses employed and subpoenaed in behalf of the State."**

"The items contained in section one, which read as follows:

'Jacob F. Schoellkopf, eight hundred and fifty dollars.'

'John Simson, nine hundred and twenty-five dollars.'

These items are objected to, and not approved, for the reason that appeals from the awards made by the Canal Appraisers in favor of the persons in said items mentioned have been taken on behalf of the State by the Superintendent of Public Works, which appeals are still pending."

June 14.

**Memorandum filed with Assembly bill, chap. 531, entitled "An act in relation to the office of the register in the city and county of New York. Approved.** [See note 19.]

"This bill, together with Assembly bill, entitled 'An act in relation to the office of surrogate of the county of New York,' which is also this day approved, came to my hands originally during the session of the Legislature and prior to the twelfth day of May last.

Upon examining these two bills, I discovered certain defects and errors of so much importance, that on the day last mentioned I addressed a message to the Assembly calling attention to the imperfections in the bills, and suggesting that they should be recalled for amendment.

This course was adopted by the Assembly, and certain amendments were made after which they were again returned to me for approval.

I think they are still defective, in that while they oblige the city to pay certain salaries to the officers therein named and profess to make all fees earned by them payable to the city, they permit these officers to turn over accounts against parties for whom official services are rendered instead of fees in cash.

But inasmuch as these deficiencies are not fatal, I waive my objections based thereon and construe the fact that they were not remedied, though attention was particularly called to them, as proof that the Legislature differed with me as to the expediency of making the change.

Among other errors, however, which were considered by all interested of sufficient importance to make necessary the recall and amendment of these bills, was one occurring in that relating to the office of register, which limited the performance of certain important duties only to the immediate successor of the present incumbent.

In the message to the Assembly above referred to, after suggesting the recall of the bills for amendment, the following language was used:

'I am led to make this suggestion for the reason that these bills belong to a class of remedial measures of great importance, and from the enactment of which valuable reforms are anticipated. It is manifest that their good effect should not be jeopardized or diminished by imperfection in their form, or by the omission of any provisions which tend to make them complete and effective.'

And the message concluded in the following words:

'I have not had an opportunity to examine the other bills in my hands, similar to those referred to, relating to the public offices in the city of New York, with such care as is necessary to determine whether they contain similar imperfections.

I recommend that bills Nos. 466 and 467, which are above referred to, be recalled for amendment. And in view of the near approach of the final adjournment of the Legislature, I suggest that the other bills of a like character be also recalled or carefully examined by some party familiar with the subjects they embrace, so that fatal defects shall not be discovered when it is too late for amendment.'

Notwithstanding this express warning there are two bills now in my hands which are connected in purpose and general design with those last referred to, which are so seriously imperfect that I have determined not to approve them. One of these is a Senate bill entitled 'An act to fix and regulate the terms of office of certain public officers in the city of New York,' which contains the same vice in an exaggerated form that caused the recall and amendment of the bill relating to the register. It absolutely makes no provision for the appointment of any officer or head of department after the immediate successors to those now in office.

And the second section provides that ' the mayor of the city of New York, to be elected at the general election in the year eighteen hundred and eighty-four, shall, within thirty days after the commencement of the term for which he is elected, appoint successors to each *office,* commissioner and head of department, who may be appointed during the remainder of the term for which the present mayor of the city was elected; and the persons so appointed shall hold office for the same terms respectively that those officers, commissioners and heads of departments whom they succeed, would have held office if this act had not been enacted, provided that any commissioner or head of department appointed under the provisions of this act, shall not hold office for any longer term or period than the term of office of the mayor by whom such commissioners or heads of departments shall be appointed, and thirty days thereafter.'

Section third repeals all acts and parts of acts inconsistent with the provisions of this act.

It will be seen at a glance that this bill does not purport to 'fix and regulate' the terms of all appointive officers, but only such as shall be appointed during the remainder of the term of the present mayor, *and their immediate successors.* And it will be observed that the next mayor can only appoint successors to such officers as shall be appointed by the present mayor *during the remainder of his term.* I think the evident intention of the bill would be entirely defeated if the mayor now in office should allow the present incumbents to hold over till the expiration of his term, instead of appointing others in their places.

When the bill attempts to fix the terms of the appointees of the next mayor, it would seem to provide in the same sentence for two limitations to such terms — that is, four years from the 1st day of May, 1885, as provided by the present law, and one year and eleven months from February 1, 1885.

I observe, too, that the last limitation only applies to 'commissioners and heads of departments,' the word 'officers' having been omitted, though it is embraced in the other limitation.

Of all the defective and shabby legislation which has been presented to me, this is the worst and most inexcusable, unless it be its companion, which is entitled 'An act to provide for a more efficient government of the department of parks in the city of New York.'

This bill provides that the terms of office of the present commissioners of the department of public parks, in the city of New York, and any of their successors who may be appointed by the present mayor, shall cease on the first day of February, 1885, and that in their place the mayor shall appoint, within ten days thereafter, three commissioners, one of whom shall serve for two years, one for four years and one for six years; and that 'biennally thereafter the mayor shall appoint *one* commissioner of the department of public parks who shall hold his office for two, four or six years, as the term of the office becoming vacant shall require or until removed.'

I confess I am utterly unable, after considerable study, to determine when the terms of any appointees after the first would terminate, or how the department could be long continued with three members, under the provisions of this bill.

In 1887 the shortest term of these officers would expire, and a commissioner should be appointed. What length of time for the new commissioner does the office becoming vacant 'require?' I think the language of the bill can be most reasonably answered by making another appointment for two years. If this were done the new appointee's term would expire in 1889. But at that time the four years' term of an original appointee would also expire, making two offices to be then filled, while the mayor, by the bill, is limited to the appointment of one commissioner in that year.

If it was intended to create a commission of three members, it is entirely evident that the term of all appointees, after the first, should have been for six years.

Appreciating the litigation and the sacrifice of rights and interests which result from defective laws, I have earnestly tried, during my official term, to enforce care in their preparation. I am importuned every day to allow laws to go upon the statute book which are mischievously imperfect, but which are deemed good enough to promote the purposes of interested parties. It is not pleasant to constantly refuse such applications, but I conceive it my duty to do so.

Though the purposes of these bills are supposed to be in the public interest, and though their failure may be a disappointment to many, I do not see that I should allow them to breed dispute and litigation touching important public offices and to be made troublesome precedents to encourage careless and vicious legislation."

June 14.

**Veto of an item of appropriation contained in Assembly bill, chap. 550, entitled "An act making appropriations for the support of Government."**

"The following item in said bill is objected to and not approved:

'For the board of commissioners of the State survey for the prosecution of the State survey for fixing meridian and other lines and points as bases of county, town and other surveys, pursuant to chapter two hundred and sixteen of the laws of eighteen hundred and seventy-eight, fifteen thousand eight hundred dollars.'

My opinion on the subject of the present mode of conducting the State survey has been more than once officially expressed. After an expenditure of a sum considerably in excess of one hundred thousand dollars, very little seems to have been done of practical benefit to the people.

That the correct location of certain points which shall be bases for local surveys would be beneficial, I have no doubt, and I should be glad to see such a work performed. But I am not able to appreciate the importance of the elaborate, slow and expensive survey of the State which this appropriation is intended to continue. I am still of the opinion that a sufficiently correct and exact location of boundary lines and monuments to answer every useful purpose could be conducted under the supervision of the State Engineer and Surveyor within a reasonable time and at a comparatively small expense. If, however, it must be done by a department formed for the special purpose, it would, I am satisfied, be much better to appropriate a large sum of money and speedily complete the work."

June 14.

**Veto of the following items in the supply bill, chap. 551:**

" 'For the officers and employes of the Legislature of eighteen hundred and eighty-four, not exceeding three in number in each house, as may be designated by the presiding officers of the respective houses, to remain after the adjournment of the Legislature to perform duty under the direction of the Clerk of each house, respectively, for a period not exceeding ten days, to each one in such sum, not exceeding his legal *per diem* allowance, as the Clerk of each house, respectively, shall certify and apportion out of the sum hereby appropriated, the sum of three hundred and sixty dollars, or so much thereof as may be necessary.'

This item is objected to, and not approved, for the reason that as a matter of right and principle this expense should be provided for in the regular appropriation for legislative expenses; and for the further very conclusive reason that compensation for the services mentioned in the item has actually been made from such appropriation.

'For Samuel C. Harris, for eight days' service as assistant door-keeper of the Assembly, from the first day of January to and including the eighth day of January, eighteen hundred and eighty-four, the sum of forty dollars.'

This item is objected to, and not approved, for the same reasons given for the disapproval of the preceding item.

'For the purpose of encouraging improvement in the manufacture of butter and cheese, and the cultivation of hops and other crops, the sum of two thousand five hundred dollars, to be distributed in premiums by the Central New York Agricultural, Horticultural and Mechanical Association, at Utica, upon vouchers to be approved by the comptroller.'

This item is objected to, and not approved, for the reason that it is a gift of money to a local association to be distributed in premiums, and because the very liberal appropriations already made for the encouragement of agriculture ought not to be increased.

'For composing and printing testimony taken by and before legislative investigating committees for the year eighteen hundred and eighty-four, for the use of such committees, upon bills therefor, which shall be certified by the chairmen of such committees and the presiding officers of the respective houses, and to be audited by the comptroller, the sum of fifteen thousand dollars, or so much thereof as may be necessary.'

This item is objected to, and not approved, for the reason that the sum of thirty-two thousand dollars, appropriated in an item which has been approved for the payment of the general expenses of the investigating committees mentioned in this item, should be and I believe is sufficient to cover the expenses above specified.

These investigations are in many cases necessary to the intelligent inauguration of needed reforms, but their extravagance and the expense attending them constitute an abuse which also furnishes a proper subject for reform. Much of this investigation could be done at the city of Albany with but little expense; but in actual practice New York city seems to be the favorite headquarters for the operations of these committees, where the most expensive quarters, at the most expensive hotels, seem to be thought necessary to a proper performance of duty, while a retinue of counsel, clerks, messengers, sergeants-at-arms and stenographers are in attendance, and frequently render the most exorbitant claims for their services. I have bills reported to me where the hotel expenses of members of investigating committees and their attaches are charged as high as nineteen dollars per day.

If only the legitimate claims connected with this work are allowed and properly audited, I am satisfied that the appropriation contained in this item can be saved to the taxpayers of the State and all reasonable expenses be fairly paid.

'For the Binghamton Asylum for the Chronic Insane * * * for building smoke houses, two hundred and fifty dollars; for building addition to meat room and moving ice-house, three hundred and fifty dollars; for building vegetable cellar, one thousand dollars; * * * for repairing ward windows, two hundred and fifty dollars; * * * for five tons of fertilizer for farm and garden use, one hundred and sixty dollars; for two lumber wagons, one hundred and sixty dollars; for two sets double harness, one hundred dollars; for farm and garden utensils, three hundred dollars; for apple and pear trees, one hundred dollars; for a washing machine for the laundry, four hundred and seventy-five dollars; * * * for furnishing new detached building, one thousand dollars; for general repairs to asylum, one thousand dollars; for medical books and surgical instruments, two hundred dollars; for carpenter's tools, one hundred dollars; for plumbing and steam-fitting tools, two hundred and twenty-five dollars; for tools for engineer at water-works, one hundred and fifty dollars; for blacksmith's tools, seventy-five dollars; for alterations of buildings to accommodate thirty-five more patients, eight hundred and fifty dollars; * * * for new boiler, one thousand dollars; and for payment for a horse killed and wagon destroyed by the falling of the said trestle, two hundred and five dollars.'

These items are objected to, and not approved, for the reason that I am satisfied that those of them, which are in the nature of permanent improvements, can be well dispensed with at this time, and the others represent small expenditures which should be made from the funds provided by the State for the general maintenance of the institution.

'For the State Homœopathic Asylum at Middletown, for the erection of an addition to one pavilion, for day rooms, the sum of twenty-five thousand dollars, but no part of this appropriation shall be expended except upon plans and specifications for such addition to said pavilion, to be approved by the board of trustees of said asylum and the comptroller, upon estimates and contracts that such work will be completed for a sum not to exceed the amount hereby appropriated for such purpose, and for walks and covered terraces about the exercise grounds of said asylum, and for grading the said grounds, and for draining the flat lands east of the asylum, the sum of six thousand dollars.'

These items are objected to, and not approved, for the reason that they are expressly disapproved by the State Board of Charities after an examination made by them, and upon their face they appear to be expenditures not absolutely necessary at this time.

'For the widow of the late Henry Gallien, deputy state comptroller, the sum of four thousand dollars, being the amount of the salary of the said Henry Gallien for one year.'

This item is objected to, and not approved, for the reason that it grants a gratuity from the treasury of the State, which is neither based upon any equitable claim or legal consideration. While the sentiment involved in this appropriation is creditable, and while it would be exceedingly pleasant for me to join the Legislature in presenting the sum of money mentioned to the family of an employe of the State who died in its service, having for many years faithfully performed the duties pertaining to a most responsible public position, I cannot forget that the money which it is thus proposed to appropriate was drawn from the people by taxation, for the purpose of meeting the necessary expenses of the government, and that we have not their consent to apply it to other objects. It is further undeniable that during all the time of his service and up to the very day of his death, Mr. Gallien was paid by the State a liberal and generous salary. I cannot think that this gift is permissible if due regard is had to the rights of the people, with such an application of business principles to the subject as they are entitled to demand.

'For Mrs. Catherine D. Pierson, widow of William W. Pierson, late journal clerk of the Senate, the sum of eight hundred dollars, being that portion of his annual salary as such journal clerk which has not been paid to him.'

This item is of the same character as that last above mentioned, and is objected to, and not approved, for the same reasons.

'For the State Museum of Natural History, for the printing of labels, binding of books and for stationery, four hundred dollars, to be paid on the certificate of the director and the audit of the comptroller.'

This item is objected to, and not approved, for the reason that the annual appropriation made to the State Museum of Natural History should be sufficient to meet the expenditure provided for in said item.

'For the Western House of Refuge * * * for fitting up and furnishing four shops, for the employment of instructors therein, and for material and incidental expenses thereof, to establish a school of technology, fifteen thousand dollars; for compensation for loss of earnings growing out of the change of the hour for schools, and in withdrawing one hundred boys from the shoe shop, six thousand nine hundred dollars.'

These items are objected to, and not approved, for the reason that the institution for which these appropriations are intended has within a few months been investigated by a committee from its Board of Managers, and also by another appointed by the last Assembly. Each committee reported that such a condition of affairs had been permitted to exist in this reformatory, as, to say the least, was calculated to impair the confidence of the people in its management, and thus diminish its usefulness. Since these reports were made public, an effort to fill the places of some of the managers whose terms had expired, failed in such a manner as to plainly indicate a determination on the part of at least some members of the board, to perpetuate its management. It is well for the taxpayers to know whether the State has any control of these institutions, and it is well for the people to inquire whether abuses in a house of refuge intended for the care of children should not be corrected by a change of management.

I have carefully abstained from any interference with the appropriations for the maintenance and repair of this institution as now conducted; but I deem it my duty to prevent the present management from extending its field of operations at the expense of the State.

'For the Comptroller, to be expended under the supervision of the officers of the Gettysburg Battle Field Memorial Association, in the erection of suitable permanent monuments to mark the positions occupied by New York troops in the decisive battle of Gettysburg, and in preserving or reproducing and perpetuating the several defensive works thrown up by them, the sum of ten thousand dollars.'

This item is objected to, and not approved, for the reason that the appropriation is to be expended under the supervision of a society, the purposes of which seem but little understood, and which appears to be a private corporation or association. The objects to which the money may be applied are patriotic and praiseworthy; but an appropriation for these purposes seems to be in conflict with section ten, article eight of the Constitution, which provides that 'neither the credit nor the money of the State shall be given or loaned to, or in aid of, any association, corporation or private undertaking.'

'For collecting, under the supervision and direction of the Secretary of State, all the journals and papers extant kept by the officers and soldiers of Sullivan's army during the campaign of seventeen hundred and seventy-nine against the Six Nations of Indians, embracing the records of the battle of Newtown, as celebrated on the battle ground, on the twenty-ninth day of August, eighteen hundred and seventy-nine, including the address of General William T. Sherman, on the dedication of a monument to the memory of the heroic dead; including, also, complete records of the centennial celebration of incidents of Sullivan's campaign, held at Waterloo, September third, at Geneva, September sixteenth, and at Aurora, September twenty-fourth, eighteen hundred and seventy-nine; and for publishing five thousand copies thereof, ten copies thereof to be furnished to each member of the Legislature, one to each officer and reporter thereof, one copy to each officer of the State government, five hundred copies to the State Library for exchange and distribution, and the remainder for the board of regents of the university, for distribution as they shall deem advisable, the sum of five thousand dollars, or so much thereof as may be necessary; the work of collecting and publishing to be let by the secretary of state to the lowest responsible bidder in each case, and the whole work not to cost more than the amount of this appropriation.'

This item is objected to and not approved, for the reason that the matter to be collected and published, with the manner of its distribution does not seem to be of sufficient public importance to justify the expenditure.

'For the commissioners of quarantine, for the purchase of a new boarding tug for the use of the health officer, seven thousand dollars; for repairs to buildings, roofs, gutters and plumbing, for repairs to rip-rap, for new platform and new timbers for docks at Hoffman island and repairs thereof, two thousand five hundred dollars; for painting and general repairs of buildings and roofs of the residences of the health officer and his deputy at upper quarantine station, one thousand dollars.'

These items are objected to, and not approved, for the reason that they are either not deemed necessary to the maintenance of the quarantine department, or are such expenditures as should be made by the health officer, if essential to the performance of his duties, and met from the enormous income he claims from fees which he is still allowed to retain.

' The corporation formed under and pursuant to the authority of chapter four hundred and ninety-two of the laws of eighteen hundred and seventy, for the purpose of constructing warehouses, docks and wharves for quarantine purposes in the bay of New York, shall not be deemed dissolved if it shall commence its operation within two years from the passage of this act.'

This item is objected to, and not approved, for the reason that if the existence of the corporation therein named is to be extended, a provision to that effect should not be put in the supply bill. Especially is this true when, as in this case, it is in no way connected with an appropriation having relation to such provision. If the insertion of the items in this bill, which is devoted to entirely different purposes, is at all effective, the objections to this mode of legislating are too obvious to need special mention.''*

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*As to " riders," see Const. 1894, art. 3, § 22.

## THE GENERAL VETO AT THE CLOSE OF THE THIRTY-DAY PERIOD INCLUDED THE FOLLOWING BILLS:

June 16.

**A. 746. Amending section 690 of the New York City Consolidation Act, relative to park keepers.**

I am quite clear that the keepers of the park provided for by this bill are not a class of employes that should only be discharged after trial.

There are certain workmen who should be subject to discharge at the will of the employer, and I think these keepers belong to that class.

**A. 565. For an additional hospital in the upper part of New York city.**

The intention of the Commissioners of Charities and Corrections was to obtain authority to purchase and fit up at moderate cost a building for the reception and temporary detention of patients until they could be otherwise provided for.

The engrossed bill omits all mention of a reception hospital within the prescribed limits, and authorizes the comptroller to issue bonds for the sum of fifty thousand dollars for the payment for the land and erection of the hospital.

The secretary of the commissioners informs me that this bill is not what they want at all. Fifty thousand dollars would be entirely insufficient for the purpose contemplated, there is no specific time for the bonds to run, and no means provided for their payment.

**A. 388. Supplementary to the law relative to places of amusement in New York city.**

This bill exempts, without any apparent reason, a certain hall from the payment of license fees. The title defines it as 'supplementary' to a certain act. The body of the bill 'amends' the act by adding a new section two. There is already a section two in the act amended. I think the bill is wrong in principle as well as in form.

**A. 355. To improve the condition of the sinking fund in New York city.**

This bill does not seem to be properly guarded. If the sinking fund is largely in excess of any possible needs, a carefully prepared plan might well be adopted for the payment of certain of the city bonds held by the commissioners. But they should, I think, be particularly specified, and the amount to be annually canceled limited. The cancellation of such revenue bonds as are now held by the commissioners, seems to me particularly objectionable.

The measure is opposed by the commissioners of the sinking fund and other city authorities. It was passed in one house May sixth and the other May fourteenth, and I am not satisfied that it was properly considered.

**S. 447. To provide for the appointment of five hundred additional patrolmen in New York city.**

This bill provides for an increase in the police force, which, considering the present provisions of law on that subject, I consider unnecessary and unreasonable. The city authorities oppose the bill, and there does not seem to be any way provided for the payment of the additional patrolmen's salaries.

**A. 688. To lay out a permanent exterior street in New York city.**

This bill contemplates a very extensive improvement. It is opposed by the city authorities, by the dock department, by the projectors of the East Side park, and by some owners of land in the vicinity. It would seem that the owners of the land fronting on the proposed street would be particularly benefited, and yet by the bill the whole expense is to be paid by the city. This is contrary to the rule adopted by the city in other street openings, and seems very objectionable. A part is to be paid by the issue of "dock bonds," and the remainder by the city, apparently from the taxes of one year — at any rate there is no provision for any bonds. I think, even if the purpose of the bill was proper, it is imperfect in form.

**A. 493. To alter the map or plan of New York city — Morris avenue.**

This bill seems to be unconstitutional, in that it is a local act and contains two subjects, and only one of them is expressed in its title.[p]

**A. 569. To authorize New York city to contribute fifty thousand dollars to the Bartholdi statue fund.**

This bill, it seems to me, is clearly unconstitutional under section eleven, article eight of the Constitution, which provides that no city, county, town or village shall be allowed to incur any indebtedness except for county, city, town or village purposes.

The bill also provides for the issuing of revenue bonds without any provision for their payment or that the amount be put in the tax levy.

**A. 449. Relative to the claim of George Nunn and William H. Wilson, to be placed upon the pension roll of the fire department of New York city.**

This bill should be rejected, if for no other reason, because it provides that if it shall appear that *George Nunn* was permanently injured, the said board are 'authorized to place the name of said George Nunn and *William H. Wilson* upon the pension roll.'

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[p] const. 1846, art. 3, § 16.

**A. 560. Relative to the claim of Robert T. Bailey against New York city.**

The services which were rendered by the applicant named in this bill, I am informed, were rendered as early as 1867. If the comptroller should examine it, he would, I think, be obliged to reject it as barred by limitation. I know of no excuse for the presentation of such very old claims, and I cannot think any just demand would have been allowed to sleep so long.

**A. 72. For the relief of Isaac Piser.**

This is a claim for services rendered in 1873, eleven years ago, under an appointment as interpreter, which was unauthorized. The applicant for relief nevertheless received his salary from the first day of January, 1870, to the first day of May, 1873. The claim is for eight months more. If the claim has any merit, it has been neglected beyond all reason, and there is great objection to the specification of the kind of proof which the comptroller shall have presented to him.

**A. —. Relative to the claim of Mary E. Bleakley against New York city.**

The claim mentioned in this bill is a very old one, and is now barred by the statute of limitations. I do not think under this bill the comptroller could find that there is anything 'justly due.' In that view it is useless. If the bill has the effect of reviving the claim, it is very objectionable, because it deprives the city of a defense which it has secured under the law.

**S. 414. For the relief of Wesley S. Yard.**

This claim is more than ten years old, and ought not to be considered for that reason alone. And if the comptroller should consider it, he ought to promptly reject it as barred by limitation.

**S. 211. To provide for the repavement of Fifth avenue, New York city.**

1. The provision in this bill that if a bid is not received for four hundred thousand dollars or less, the work may be readvertised, and on such readvertisement the work may be let upon the lowest bid, which is for five hundred thousand dollars or less, is a direct invitation to those bidding to force a readvertisement, and consequent higher bids. A better scheme for corrupt combinations between bidders and resulting loss to the city could not be devised.

2. There is no discretion as to the kind of pavement. It must be granite.

3. There is no provision for raising money by tax to pay the principal and interest of the bonds.

**A. 334. To prohibit 'bucket-shop' business.**

This bill is, I fear, so inartificially drawn that it will prohibit any contract for the sale of stock not actually delivered. If I understand it, the prohibitions of the bill would go much further than its promoters intended, and subject to punishment persons who do not deem themselves in immediate danger.

I believe "bucket shops" should be suppressed, but I think a better bill should be devised for that purpose.

**S. 328. To amend section twenty-two of the Code of Criminal Procedure.**

This bill, as I understand it, allows the Oyer and Terminer, on its own motion, in any case, to remove an indictment to that court for trial. I think this is a little *broad*.

**S. 304. To amend section forty-nine of the Code of Criminal Procedure relative to compensation of justices of sessions in Kings county.**

I know of no reason why Kings county should be excepted from section forty-nine.

**S. 413. To amend section five hundred and twenty-eight of the Code of Criminal Procedure.[21]**

This bill permits the Court of Appeals in a capital case to grant a new trial, if it be satisfied that the verdict was against the law or evidence, or that justice requires it, whether any exception shall have been taken or not.

This is a wide departure from the present practice. I am willing to extend proper opportunities to a prisoner condemned to death; but I am in extreme doubt whether this bill, if signed, would not force counsel for the convict to go to the Court of Appeals upon the chance offered in any capital case, thus adding to the delay of punishment and the labor of the highest court of law, with no corresponding advantage to the condemned.

The amendment is also disapproved by public prosecutors of learning and experience, to whom it has been submitted.

**S. 379. To amend sections five hundred and seventy-nine and five hundred and eighty of the Code of Criminal Procedure.**

The object of this bill is to allow bail to be taken for a party arrested upon an indictment, whether for a felony or misdemeanor, in any part of this State where he may be arrested. The object of a bench-warrant is to secure the attendance of the indicted to plead to the indictment and be tried. I am not sure that allowing bail to be taken in case of felonies where the defendant is arrested is an improvement. However that may be, in specifying the magistrates which shall take such bail, the bill speaks of the class mentioned in the *second subdivision of section five hundred and fifty-seven.* There is no such subdivision, and if this additional power is to be given to judicial officers there ought to be no uncertainty as to who they should be.

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[21] This provision relative to granting a new trial by the Court of Appeals was included in the Code of Criminal Procedure, section 528, by L. 1887, chapter 493.

**S. 43. To amend section seven hundred and ninety-two of the Code of Criminal Procedure.**

Section seven hundred and ninety-two has reference to *search warrants.* This bill amends by calling them *warrants.* They are entirely distinct, and I think the amendment should at least begin by saying, 'Such warrant,' instead of 'A warrant.' I do not see that this bill is really needed, since chapter four hundred and ninety-six of the Laws of eighteen hundred and eighty-one appears to furnish ample remedy.

**A. 403. To amend subdivision two of section one hundred and ninety-one of the Code of Civil Procedure.**

This bill would permit an appeal to the Court of Appeals from the Marine Court (city court of New York), without the consent of the General Term.

In the present condition of the calendar of the Court of Appeals, I think this new access to that court should not be allowed.

**A. To amend section ninety-seven of the Code of Civil Procedure.**

I can see no sense in this bill. It apparently allows the county judge of Westchester county to *name* the constables who shall attend not only the County Court, but the terms of the Supreme Court. It does not appear to be confined to the number, but includes the *persons.*

**A. 333. To amend section seven hundred and fifty-seven of the Code of Civil Procedure.**

This bill, it appears to me, is too broad. There is a difficulty about serving notice of motion on a foreign executor. It seems to permit the action to proceed against him for the entire claim, if only a small part of the deceased's assets have been brought into the State, and I do not see why it does not permit the whole claim to be prosecuted against him personally, though he may have acquired but very little of the property of the deceased 'in trust for himself as devisee or legatee under the will.'

**S. 234. To amend section seven hundred and ninety-one of the Code of Civil Procedure.**

I am not satisfied of the propriety of making the proposed addition to the already long list of preferred causes.

**S. 239. To amend section eight hundred and thirty-one of the Code of Civil Procedure.**

The amendment proposed by this bill permits a wife, in any proceedings involving the allegation of adultery, to testify not only to the fact of marriage, but to disprove the charge of adultery. This, it seems to me, is equivalent to allowing her to testify generally in such a case, and is in direct opposition to the long established policy of the law. As a practical question, it would lead to perjury or to silence when she might speak, which would constantly be urged as a tacit admission of guilt.

**A. 355. To amend section twelve hundred and seventeen of the Code of Civil Procedure.**

The interpolation of the word 'apparently' in this bill would, I think, lead to confusion and injustice.

**S. 191. To amend section thirteen hundred and twenty-five of the Code of Civil Procedure.**

This allows a year to appeal in a case in which permission of the General Term is necessary. Application for such consent must be made at the General Term rendering the determination, or at the next term. There should be some provision permitting an appeal allowed by the General Term within a certain time after the order is granted. But this amendment is ambiguous and susceptible of doubtful construction.

**S. 330. To amend section twenty-two hundred and thirty-one of the Code of Civil Procedure, relative to rents and taxes.**

I approve of the purpose of this bill, but cannot sign it, for the reason that the word 'owning,' in next to the last line of section two should be 'owing.' This, I think, is a mistake important enough to call on me to reject the bill.

**S. 67. To amend section twenty-seven hundred and twenty-two, twenty-eight hundred and two, twenty-eight hundred and thirty-seven and twenty-seven hundred and ninety-three of the Code of Civil Procedure.**

I think this bill imposes an unreasonable burden on the parties pursuing administrators, guardians, etc. (72 N. Y., 565; 81 N. Y., 573; 87 N. Y., 572.)[a]

**A. 391. To amend section twenty-nine hundred and ten of the Code of Civil Procedure.**

The propriety of this bill is extremely doubtful. It requires the constable to serve the *affidavits,* etc.— not copies. It is very clear that the original of these papers should be retained by the justice.

**A. 133. To amend section three thousand and twenty-four of the Code of Civil Procedure, relative to the issue of executions upon judgments by justices of the peace.**

I think this case is already sufficiently provided for by sections three thousand and twenty-four and three thousand and twenty-seven.

**S. 367. To amend section twenty-eight hundred and seventy-nine of the Code of Civil Procedure.**

This bill is too indefinite as to the person who shall be deemed a general or local agent.

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[a] Scofield v. Churchill, 72 N. Y. 565; Gerould v. Wilson, 81 N. Y. 573; Harrison v. Clark, 87 N. Y. 572.

**A. —. Relative to notaries public in Erie county.**

The present law provides for a sufficient number of notaries.

**S. 359. Relative to weeds and brush in public highways.**

Only the first section amends chapter forty-nine of the Laws of eighteen hundred and seventy-eight. The rest are independent provisions, and confuse, instead of amending, the law of eighteen hundred and seventy-eight.

**A. 90. Relative to preservation of game.**

The word 'birds' is omitted from the title of the bill. It provides for exemplary damages and a penalty for a private trespass, and there is no such officer as superintendent of the poor of towns — it is '*overseer.*'

**A. 375. Relating to the preservation of game.**

The law hereby amended is repealed by section forty of chapter five hundred and thirty-four of the Laws of eighteen hundred and seventy-nine.

**A. 648. Relative to the removal of obstruction in Chautauqua lake.**

This is not a proper appropriation of State money — not a State water highway. See veto of Governor Cornell, papers of eighteen hundred and eighty.[22]

**S. 590. Relative to payment of school taxes by railroad companies.**

I cannot imagine why the county of Cattaraugus should be excepted from the general Law of eighteen hundred and eighty-one, and no reason has been suggested.

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[22] See 1880, veto Message of June 7, *ante*, p. 473.

**S. 375. Amending corporation tax law.**

The title is to amend chapter one hundred and fifty-one of the Laws of eighteen hundred and eighty-two.

The first section amends section nine of chapter three hundred and sixty-one of the Laws of eighteen hundred and eighty-one. This latter chapter has but two sections. See confusion and nonsense in lines ten, eleven, twelve, thirteen and fourteen.

Section two amends section eleven of chapter one hundred and fifty-one of eighteen hundred and eighty-two. There is no such section.

The first section amended strikes out the remedy by suit. The second section amended refers to a suit thus brought.

It is all wrong.

**S. 308. Relative to the formation of railroad corporations.**

Section fourteen of the law of eighteen hundred and eighty-one is: 'This act shall take effect immediately.' This remains untouched, and the effect of this bill is to add another section fourteen. I do not think the title should be amended in the manner proposed.

**A. 351. To define the duties of railroad commissioners.**

Railroad companies are not required to report before December first, so that the Comptroller would have no data to assess by on December first, for the year ending the previous September thirtieth.

**S. 336. To incorporate the State Loan and Trust Company of the city of New York.**

I think this company should be made expressly subject to the provisions of the revision of the banking law of one thousand eight hundred and eighty-two (see sections two hundred and nineteen to two hundred and thirty-four), which are applicable to trust companies. These special charters for corporations of this description give very extensive and dangerous powers, and they should be well guarded. I further agree with the Superintendent of the Banking Department in his disapproval of this bill, on the ground that it allows the company to become security for public officers (see section eleven, subdivision nine), and because it allows a branch to be established in Brooklyn.

**S. 53. Relative to banks, banking and trust companies.**

This bill does not change the *status* of foreign associations, I think.

**A. 635. To amend the act to authorize the formation of railroad corporations in foreign countries.**

This is all wrong. The bill does not specify any amendment to the law of eighteen hundred and eighty-one, and makes no place for the provisions of the bill in the original act. Besides, it describes the act to be amended in the title as passed June third; it should be June sixth.

**A. 273. Relative to formation of town insurance companies.**

The law which this bill seeks to amend was repealed by chapter three hundred and forty-seven of the laws of eighteen hundred and sixty-two, which saved such corporations as had been organized under the statute thus repealed.

Instead of attempting to amend a law that has been repealed, this bill should, as an original act, give companies now existing under it the additional powers which is attempted to be given by this amendment, if thought proper.

**A. 274. Relative to mutual insurance companies in certain towns in Albany and Greene counties.**

This bill embraces two subjects:

1st. Amending previous statutes, etc.

2d. Extending corporate existence of a certain corporation.

It is a local and private bill, and embracing more than one subject not expressed in the bill, is unconstitutional. (Art. 3, sec. 16.)

**S. 22. To regulate the defense of suicide by life insurance companies in cases of insanity.**

I do not see why a person should not be permitted to deliberately make an agreement with an insurance company to the effect that the policy should not cover a loss by suicide, though the insured at the time of death should be insane.

**A. 715. To except the town of Pultney from the operation of laws prohibiting the laying out of highways through orchards and vineyards.**

This is the worst kind of special legislation, and there has been no pretext presented to me why it should be indulged in in this case.

**S. 437. Relative to Board of Health of Saratoga Springs.**

It seems to me that the power vested by this bill in the trustees of the village, to appoint a health physician for the village *and town,* who shall be a member of the board of health of such village *and town,* is unconstitutional, the trustees of the village not being authorities of the town. See Constitution, art. 10, sec. 2.

**A. 528. Relative to the support of the Syracuse fire department.**

I think this bill is unconstitutional so far as it affects present incumbents of office. See Constitution, article three, section eighteen, subdivision as to 'creating, increasing or decreasing fees, percentage or allowances of public officers during the term for which said officers are elected or appointed.'

**A. 580. Relative to repairs of highways from Wilmington to North Elba.**

This bill contains matter not expressed in its title in relation to the settlement of the accounts of the commissioners, and the application of certain moneys to the improvement of a highway. On this account it is, I think, unconstitutional.[r] It seems that an effort was made to amend the title so that it would come nearer to covering the provisions of the bill.

The object of the bill was not, however, added to the title, and if it had been, I am not sure that it would have helped matters.

**A. 405. To amend the charter of Newburgh.**

The first section of chapter five hundred and forty-one of the Laws of eighteen hundred and sixty-five, amended by section four of this bill, describes the boundaries of the city.

By the proposed amendment the boundaries would be stricken out and the officers of the city put in their place. Under this state of things the city charter would have two sections (section 1 and section 1 of title 2), designating the officers of the city, but it would be without boundaries.

**A. 504. Relating to a separate road district in Northfield.**

No reason has been presented to me for the passage of this bill, and it is represented that the citizens are opposed to it. The number of commissioners was fixed at one in eighteen hundred and eighty, and I have no reason to suppose that a single commissioner is not equal to the emergency.

**A. 439. To authorize the construction of a bridge over the canal in Newark.**

I can see no good reason why the State should build this bridge for the people of Newark.

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[r] Const. 1846, art. 3, § 16.

**A. 336. To legalize the title of the St. Paul's Methodist Episcopal church of Onondaga Valley to certain lands.**

If the conveyance by the surviving trustee was valid and effectual, no law confirming it is needed. If it was not, it was in derogation of the rights of the *cestui que trust*, which ought not to be swept away by the Legislature, even if it has the right or power to do so.

**A. 658. Relative to the Oswego water supply.**

This bill is opposed by the Mayor of Oswego and twelve out of fourteen of the Aldermen, and I think this a good reason for withholding my signature.

The city now has a contract with a company to furnish water to the city which extends for four years longer.

**A. 440. Relative to waste gates in the Erie canal in the village of Spencerport.**

There is no public interest subserved by this bill. Certain millers were using the waters of the canal, and by their dams caused an overflow, which the Board of Health condemned as a nuisance, and directed the canal authorities to clear the waste weir, which was done. The object of this bill is to build another to accommodate the mills.

**A. 778. To authorize the Syracuse Water Company to supply the village adjacent to Syracuse with water.**

I think the title of this bill does not properly express the subject of the same.[s] It purports to be a bill authorizing the Syracuse Water Company to supply the *village* adjacent to Syracuse with water. The bill declares that said company shall supply with water '*any* village adjacent or *near to* said city.'

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[s] Const. 1846, art. 3, § 16.

**S. 348. To provide the city of Utica with water.**

I do not think the provisions of this bill, which contemplate taking the property of the Utica Water-Works Company are legal; or, if legal, sufficient. It is at least very doubtful whether the lands or easements which have once been condemned for public use by the water-works company can be again condemned for the same use.[t] If they can, this bill does not adequately provide for the appraisal of the contract with the city which the proceedings will nullify. No rule is laid down for determining the value of this, nor any of the easements of the company. The plan of appraisal adopted by this bill is that contained in the general railroad law, which only provides for the appraisal of real estate. If the right to thus take the property was legal, and if the provisions were adequate, I still think the city ought not, on principle, fairness and good faith, to acquire to itself the subject of the contract with this company, and annul said contract, making no provision for the debts of the company.

**S. 309. To amend the charter of Troy, relative to violation of the excise laws.**

This bill is fatally defective because a part of it, as passed, is omitted in engrossing. I am by no means sure that the provision allowing the superintendent of the poor and attorney to satisfy judgments is proper. If the judgments belong to the city they can be compromised and settled (probably) by the city authorities. If they, or any part of them, belong to third parties, the city authorities ought not to be allowed to settle them.

**A. 495. Relative to the public peace in the town of Watervliet.**

My opinion is that the locality named in this bill has now only an adequate police force. If four policemen were needed in eighteen hundred and eighty-one, I think they are needed now. The cutting down the appropriation from two thousand five hundred dollars to one thousand five hundred dollars, would, of course, reduce the force, which, I think, is unwise.

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[t] See Re Rochester Water Comrs. (1876), 66 N. Y. 413.

**A. 282. Relative to the purchase of hose for the fire department of Saratoga Springs.**

If the amount authorized to be expended by this bill cannot be put in the tax levy after June third (as I am advised), there is no use in signing this bill after that date. The bill is not drawn properly, inasmuch as it provides that the trustees may expend upon the faith and credit of the village in the first section, and provides that it shall be raised with the other taxes for the year one thousand eight hundred and eighty-four in the second section.

Section two is also blind and ungrammatical. I am of the opinion that the subject had better be delayed.

**A. 689. Relative to the disposal of sewage in the village of Saratoga Springs.**

The attempt in this bill to blend independent provisions with amendments of the law of one thousand eight hundred and eighty-one, has bred such confusion that I am sure the proposed law would be a source of embarrassment and trouble. The amendment of the law of one thousand eight hundred and eighty-one authorizes issuing bonds of the *town* in anticipation of the receipt of the money provided by *this act;* whereas, the money spoken of is not raised under the amended law of eighteen hundred and eighty-one, but by the independent provision of the act of eighteen hundred and eighty-four. The whole thing is a jumble.

**A. 627. To amend the act to authorize the town of Glenville to purchase a bridge.**

The present law on the subject contained in this bill seems sufficient. It is the citizen or taxpayer that is now exempted; and if exempted at all, it should make no difference whether the vehicle he rides in is owned within the limits of the town or not.

**A. 787. To enable corporations to extend their existence.**

The power to extend the existence of all corporations formed under general laws by a vote of the stockholders is now given by chapter twenty-nine of the Laws of eighteen hundred and fifty-seven, and chapter nine hundred and thirty-seven of the Laws of eighteen hundred and sixty-seven. If corporations formed under special laws are unprovided for, these statutes relating to other corporations might be extended to them, but I do not think that in all cases it should be left to the directors, instead of the stockholders, to extend the corporate existence to an indefinite and unlimited time.

**A. 342. To authorize the Yates County Agricultural Society to sell and convey a portion of its real estate.**

Agricultural societies formed under chapter four hundred and twenty-five of the Laws of eighteen hundred and fifty-five may sell real estate by consent of the court. [See section seven of that act.]

**A. 417. To amend the charter of Buffalo.[23]**

A bill has been lately approved providing for the appointment of commissioners to revise or prepare a charter for the city of Buffalo, who are directed to report such charter to the next Legislature.

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[23] Buffalo received a new charter in 1891, chapter 105. This act was sustained in the following cases: People v. Warren (1894), 77 Hun, 120; People ex rel. Warren v. Beck (1894), 10 Misc. 77, reversed without considering constitutionality of statute in (1894), 144 N. Y. 225; sec. 504, labor regulations, as amended in 1895, chapter 805, People ex rel. Ward v. Scheu (1901), 167 N. Y. 292; sec. 271, commission of public works; People ex rel. Bull v. Buffalo (1900), 52 App. Div. 157; affirmed 166 N. Y. 604, amending sec. 397, street repairs.

The following provisions were declared unconstitutional: sec. 374, supervisors, People ex rel. Howard v. Wende (1898), 25 Misc. 330; as amended in 1895, chapter 805; People ex rel. Howard v. Erie County (1899), 42 App. Div. 510, affirmed in (1899), 160 N. Y. 687.

This bill contains several quite important changes in the present law, and, if approved, may have the effect of confusing the provisions of the new charter; or they may hardly be in operation before they are superseded by the new law. On the whole, I am inclined to leave all alterations to be embodied in the new charter, which I hope will be a very complete one.

### S. 227. To authorize the formation of the New York Transit Company.

The amendment of this bill in section three, which is written over an erasure, makes a muddle of the language of the bill by authorizing railroad and steamboat companies and hotel proprietors, and requiring them to issue licenses. This language in the original bill applied to the Board of Police.

By section eight any railroad or steamboat employe, or hotel keeper or employe, who shall refuse to grant the employes or agents of said company any of the rights and privileges granted them under the terms and conditions of the foregoing sections of the act may be sued, etc.

This verbiage fitted the bill when there was no provision for consent of hotel keepers, but it is hardly applicable to the bill as it now appears.

See provisions of section three written over erasures (amendment) and provisions of section eight. The last are unnecessary after the amendment to section three.

### A. 534. Amending charter of Montezuma.

A remonstrance is presented against this bill; various offices are abolished by it, and an error in the third section in speaking of 'highway labor in said section' renders it nonsense.

**S. —. Relative to school system of Ithaca.**

*First.* The authority to raise the money by installments contemplates that a certain part of the same shall be put in the tax levy for each year, according to the installments determined on.

The certificates are not contemplated at all.

*Second.* The rate of interest is too high.

*Third.* There are two subjects in the bill, to wit: The right to issue certificates, and the enlargement of the powers of the Ithaca Savings Bank.

*Fourth.* It gives the savings bank an exclusive privilege, to wit: To alone, of all the savings banks, invest in these certificates.

**A. 633. In relation to the village of Geneva, Ontario county.**

The case provided for by this bill is embraced in a bill regulating railroads, passed at the last session of the Legislature (1884), and which has been approved.

**A. 662. To authorize the village of Danforth to contract with the Syracuse Water Company.**

A bill passed authorizing the Syracuse Water-Works Company to supply the villages adjacent or near to said city, has been disapproved and not signed.

As this bill, if signed, would not accomplish any purpose, on account of want of authority in the Syracuse Water Company to contract, I think it best not to approve the same.

**A. 555. To authorize the Supervisor of Denmark to convey certain land.**

This apparently permits the supervisor of Denmark to convey without compensation the land of the town to a private corporation without the special assent of the town.

This should not be done in any event; and the giving away of the land of the town in this way is prohibited by section eleven, article eight of the Constitution.

**S. —. Relating to Union school district in towns of Lysander and Van Buren.**

The superintendent of public instruction, to whom this bill was referred, is of the opinion that the power sought to be conferred by the amendment proposed in this bill is already vested in the board of education of the union free school district named in the bill.

**A. 727. Relative to voting at town meetings on propositions to raise money by tax.**

The law amended by this bill prescribes the manner of voting to raise money in sums over five hundred dollars. This bill has different provisions for all cases, regardless of amount. The latter, if proper in other respects (which I doubt), might well supersede the present law; but standing with it, and becoming a part of it, must lead to uncertainty and confusion.

**A. 589. To legalize the acts of the trustees of the First Presbyterian church of Batchellerville.**

The sale of the church property was absolutely void, and I do not think the proposed law would vest a good title in the purchasers. And if this conveyance can be made effective by legislation, I think it should be passed with the approval of the congregation.

**A. 660. To renew the charter of the Salisbury and Manheim Plank-Road Company.**

The charter of this plank-road company expired November fifteenth, eighteen hundred and seventy-eight. On the twenty-second day of November, eighteen hundred and seventy-eight, the board of supervisors, under the law of eighteen hundred and seventy-six, passed a resolution extending the charter. This was the proper mode of securing the extension, and it is provided by general law. In the fear of the futility of the action of the board of supervisors this bill is proposed, giving retroactive effect, and renewing the charter from November fifteenth, eighteen hundred and seventy-six. In the meantime the people have acquired rights by the expiration of this monopoly, which I do not think should be destroyed in the manner proposed by this bill.

**A. 652. To provide for the payment of certain claims for work done on the Amsterdam Water-Works.**

I should like to aid the parties who furnished materials and did work for the contractors at Amsterdam; but as the village has paid all it owed to the contractors, and is in no way liable to the others, I do not see but that any further payment to the creditors of the contractors would be a gratuity prohibited by section eleven, article eight of the Constitution.

**A. 659. Relative to assessments for paving in the city of Albany.**

The mayor objects to this bill, and I agree with him that it authorizes too large a sum to be annually expended for the purposes named.

**S. 443. Releasing certain lands in Syracuse to Harriet N. Marvin.**

On the 6th day of May, 1884, the Land Board passed a resolution that the land described in this bill, and other lands, be advertised and sold, as being "largely in arrears for principal and interest."

I do not understand this.

**A. 506. To prevent obstruction of the highways by snow drifting.**

The ascertainment of damages is not in accordance with article one, section seven of the Constitution. Commissioners of appraisal should be appointed by the court.

**S. —. Incorporating Uniformed Veterans, Twenty-third regiment, National Guard.**

I think the present law is sufficient to permit the organization provided for by this bill.

**S. —. To prevent persons from wearing the badge of the Grand Army of the Republic.[24]**

This bill makes it a misdemeanor to wear a badge of the Grand Army. The wearing need not be characterized by any intent, but is criminal if not in accordance with the rules and regulations of an army post with which the wearer may be entirely unacquainted, and the penalty recovered on conviction is left in its disposition altogether too indefinite.

**S. —. To incorporate the Veteran Association, Seventy-first regiment, National Guard.**

I am satisfied that the present general laws are sufficient for the proper organization of this Veteran Association.

**A. 479. To prevent sale of cigarettes to children.**

The title of this bill is "An act prohibiting the sale or giving away of cigarettes to any minor under the age of fourteen years."

But the law does not prohibit the giving away, only the sale, and allowing to be given away. It goes too far or not far enough.

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[24] In 1899, by chapter 184, section 674a of the Penal Code was amended by prohibiting the unauthorized wearing of badges or buttons of the Grand Army of the Republic.

**A. 39. To regulate the hours of labor of drivers and conductors of horse cars in cities.**

I fail to see any good purpose to be gained by this bill. It is distinctly and palpably class legislation, in that it only applies to conductors and drivers on horse railroads. It does not prohibit the making of a contract for any number of hours' work, I think; and if it does, it is an interference with the employer's as well as employe's rights.

If the car drivers and conductors work fewer hours, they must receive less pay; and this bill does not prevent that. I cannot think this bill is in the interest of the workingman.

**A. 484. To provide for the assessment of property in certain cases, and to regulate and equalize the same.**

This would be a troublesome and might be a very vexatious proceeding. If the present law does not reach the case herein provided for, it would be much better to declare the omission of property of assessors by them a misdemeanor.

**A. 67. In relation to appeals from surrogates' courts.**

I cannot quite understand this bill, which I think is a good reason why I should not sign it.

There is beside an evident omission of something in line thirteen, after 'eighty.' Probably the words 'such party' should have been inserted.

**A. 544. To provide for the payment of services rendered to Benjamin F. Congdon.**

There must be a better way than that designed by this bill to settle the claim therein mentioned. It is not entirely certain that the costs and expenses of proving the claim should be included in the recovery, nor that the claim should be paid out of the annuity. And if it should be so paid, it cannot be under this bill, as 'annuity' reads 'annulity,' which is an absurdity.

**S. 347. To require the Secretary of State to procure a suitable plate and to print certificates to be presented to honorably discharged soldiers and sailors who served the United States from the State of New York.**

This, if done at all, should be done by the Adjutant-General.

**S. 278. To create a forest commission for the State of New York.**[25]

This bill came to my hands after the adjournment of the Legislature, which rendered it impossible for me to appoint a commission under its provisions. In the meantime, in the supply bill, an appropriation is made, to be expended by the comptroller for purposes almost or quite identical with those with which the commissioner under this bill would be charged. I am of the opinion that if this bill is signed, though no commissioner is appointed, it would prevent the expenditure under the supply bill. At any rate there would be danger of such a result. In this event the object sought would entirely fail. This bill provides that a commissioner shall be nominated for confirmation by the Senate within ten days. This cannot be done, and I am clear that the whole subject, so far as it is embraced in this bill, had better be postponed.

**A. 731. To annex the town of New Lots to the city of Brooklyn.**

It is represented to me that if this bill is signed the project of annexation will be defeated by the voters at the polls.

I think the bill is faulty. In the first section it declares that the town of New Lots *is annexed,* and afterwards provides that the people shall determine the question *at the next election,* and it is declared that the law shall take effect

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[25] A forest commission was created by chapter 238, L. 1885.

*immediately*. I think it should have provided that all but the section submitting the subject to the people should take effect January first, eighteen hundred and eighty-five. [See chap. 613, Laws of 1873.]

**A. 530. To authorize the town board of Flatbush to license and regulate public hacks, vehicles, vendors and peddlers.**

This bill represents a kind of special legislation which should be discouraged. The provision is especially objectionable which directs the Court of Special Sessions to pay over the amount of penalties, less the expenses of conviction, to the town board. All should be paid over and the expenses of the convictions afterward paid by the town.

**S. 405. To organize the Veteran Reserve of the National Guard.**

The association of the veterans of the National Guard for social and benevolent objects, and to foster and keep alive their interest in the parent organization, is a laudable and pleasant thing to do. And this can be fully accomplished under existing statutes. There seems to be much interest manifested in this bill, and I am exceedingly sorry that my ideas of duty to the State oblige me to refuse to approve the measure.

The National Guard is a department of the State of great importance, though I fear this fact is not fully appreciated for the reason that their services are ordinarily not needed. I place so much importance, however, upon the proper maintenance of the Guard that I am unwilling to do anything which, in the almost unanimous opinion of those connected with it, and in my own judgment, will impair its efficiency or injure its *morale*.

This bill merely creates a separate military establishment, amenable to none of the laws that regulate the regular guard, and not subject to the constituted military authorities of the State. They elect their own officers, and call upon the Governor to grant them a military commission without regard to their fitness to perform any military duty. They are subject to no military service except upon the command of the Governor, in the absence of the regiment of which they are veterans; and they cannot be called away from home on any duty. Their rules and regulations are entirely of their own making, and their uniforms (and probably their *arms*) of their own selection. In such circumstances I am sure that it might well be considered as exceedingly risky to call on such organizations for serious military service. Their practical usefulness to the State not being a sufficient reason for signing the bill, it is my opinion that the rank and uniform of soldiers should not be given by the State to these voluntary and self-regulating organizations. Military titles should be given by the State to military men, and it should dictate the uniform its soldiers shall wear with a view to practical work and usefulness. To cheapen these things by according them to others than the soldiers of the State, cannot fail, it seems to me, to breed natural discontent, and bring about a lack of hearty enthusiasm, upon which the usefulness of the Guard so much depends. I hope that the veteran associations may continue as at present organized, or as they now have the right, will organize, and in a proper and useful sphere do much to support and encourage the active soldiers of the Guard.

**S. 458. To amend charter of Saratoga Springs.**

The trustees of the village of Saratoga Springs have ample power to prescribe the places where hacks shall stand, and they should manage the matter and not shirk the duty. The Legislature has no business with it.

**A. 767. Amending an act for the incorporation of societies or clubs for certain social and recreative purposes.**

Chapter three hundred and sixty-eight of eighteen hundred and sixty-five, was amended by chapter seven hundred and ninety-nine of eighteen hundred and sixty-seven, allowing trustees, etc., to be divided into classes and a part to be elected annually. It was further amended by chapter six hundred and ninety-eight of eighteen hundred and seventy-three, so the number might be increased to thirteen in substantially the same manner as proposed by this bill.

The bill nullifies and ignores both of these amendments, and changes the original act so that the number of trustees can be increased indefinitely, but not diminished as was provided by the amendment of eighteen hundred and seventy-three.

The power to classify is lost as well as the power to diminish, and the increase may be without limit.

These are objections which I regard as vital.

**S. 341. To incorporate the Safety Elevator Insurance Company of New York.**

I doubt the propriety of allowing an insurance against liability for damages which may be claimed against the insured arising from accidents in an elevator. Will it not tend to the relaxation of care in their management, and increase danger to life and limb?

The individual liability of the stockholders should not be limited to the amount unpaid on the stock.

**A. 168. Amending act to prevent adulteration of food and drugs.**

The title of this bill declares it to be an amendment of chapter four hundred and seven of the Laws of eighteen hundred and eighty-one. But that is the last that is said on the subject of amendments. On the contrary, it appears to be an entirely independent act, reproducing the act of eighteen hundred and eighty-one, with alterations, and in some cases prescribing different penalties for the same offense.

It does not even repeal the Law of eighteen hundred and eighty-one in terms.

Besides the imperfections in the construction of the bill, it does not seem to be just right in substance.

Ought a man to be punished who innocently and in good faith has, or even sells, adulterated drugs?

**A. 802. Amending act for relief of corporations organized under general laws.**

It seems to me the law of eighteen hundred and seventy goes far enough.

This bill permits any infirmity or omission in any application or proceedings in relation to the same to be cured simply by the filing of an amended certificate, with no amendment of anything else connected with the formation of the corporation.

**A. 277. Amending act to provide for the organization and regulation of certain business corporations.**

I think authority for a corporation to mortgage its property should rest upon a vote of its stockholders, as is now provided by the general manufacturing law, and that the directors should not be permitted to make such a mortgage in the absence of such permission. This bill is unintelligible where it provides that bonds may be issued, 'secured by mortgage on its real estate not so secured.' Something is evidently omitted.

**A. 625. To establish a board of assessors in Richmond county.**

This bill provides for largely increasing the expenses of assessing property in Richmond county. It is special legislation designed to exempt the county from the operations of the general State law, and the people of that locality seem to be opposed to it.

**A. 486. Relating to the administration of oaths in canal business.**

This bill is fatally defective in that it provides for the filing of certain signatures with 'the Auditor of the Canal Department,' which officer no longer exists under the statutes.

**A. 683. Relating to the sheriff of Rensselaer county.**

I cannot understand why this bill is not unconstitutional. It certainly *fixes* the compensation, even if it does not increase or diminish it, of the present sheriff, and also his allowances.[a]

**A. 255. Compensation of supervisors in Monroe, Orleans and Broome counties.**

No reason appears why the supervisors of the three counties named should be paid more than those of other counties. If supervisors do not receive sufficient compensation, a general law should be passed changing the existing statute.

This bill would increase the compensation of officers now in office, which is in direct violation of the Constitution of the State. (Const., art. 3, sec. 18, sub. 10, and art. 3, sec. 24.)

**A. 312. For the reclamation of overflowed lands adjoining the Indian river in Jefferson and St. Lawrence counties.**

I cannot understand why injuries to the riparian owners, of the kind named in this bill, should be sued for by the commissioners appointed for entirely different purposes. It is specially provided that the damages to be recovered shall be only such as the owners themselves might recover, and the remedy provided for by injunction is the usual one resorted to between individuals in such cases. I do not see why the people themselves should not prosecute. In a letter presented to me in favor of the bill, its object is declared to be to relieve the owners themselves from beginning such suits.

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[a] Const. 1846, art. 3, § 18, added 1874.

**A. 784. For the conveyance of lands — J. Stewart Dennison.**

The proposition contained in this bill is to release whatever interest the State may have in land in Warren county to a perfect stranger, who has no equitable or other claim, such as is usually presented in like cases. If he has claims against the estate of the deceased alien, he should enforce them in such a way as to cause the land to be sold for their payment; and after he has gained such a title, it will be in order, if necessary, for the State to release or the Land Board to convey, when permission is given them to do so.

**A. 575. Conveying lands in Franklin county to Robert Schroeder.**

The policy of the State is settled to prevent the transfer of these lands, and I see no reason why the premises described in this bill should be transferred to Mr. Schroeder. It is said that the acquisition of the tract is of importance to him on account of its possessing a pleasant view and a pond in which he wants to fish. The view will be fully as pleasant if the State retains the title to the land, and I do not think that his fishing will be seriously interfered with by the failure of this bill.

**S. 344. To amend sections 315 and 316 of the Code of Civil Procedure.**

The object of this bill is to increase the jurisdiction of the former Marine Court, now City Court, in the city of New York, from twenty-five hundred dollars, as now limited, to causes involving a sum not exceeding five thousand dollars.

With all the other courts of the city of New York having jurisdiction exceeding that of the court in question, I can see no good reason for extending its jurisdiction at this time.

### S. 292. Amending the New York City Consolidation Act, relative to the board of health.

This bill is intended to enlarge the powers of the board of health. Whatever may be the merits of the measure, an insuperable objection to its becoming a law, in my mind, is the provision therein contained that a summons may be served on parties violating certain ordinances or regulations of the board of health by posting the same upon the premises or even upon an unoccupied lot, and by mailing a copy thereof to the owner or principal, if his place of residence be known.

As I understand the bill, such service might be followed by entry of a judgment for quite a large penalty against such person. I regard this manner of service entirely inadequate.

### S. 340. To amend the Consolidation Act of the city of New York in reference to the erection of buildings.

The purpose and object of this bill is important; and it seems to have received a good deal of attention from parties who know what is needed in reference to matters of which it treats, but the construction of the bill is so faulty, the inaccuracies and mistakes in its language are so numerous, and some of them so likely to lead to complications, that much as I approve of the object of the measure, I have determined to withhold my signature from it.

As one instance of carelessness displayed in drawing this bill, I refer to the amendment to section thirty-two, amending section five hundred and five of the consolidation act which gives to the superintendent of buildings power ' to remit any fine or fines, penalty or penalties, which any person or persons may have incurred, or may hereafter incur, under any of the provisions of *this act*,' — the 'act' referred to being what is called the consolidation act, providing for the government of the city of New York. There are numerous fines and penalties having no relation to the subject treated of in this bill, which, under its language, the superintendent of buildings would have power to remit. This, of course, was never intended.

**S. 325. To repeal certain acts relative to the city of New York.**

The object of this bill is to repeal laws in existence, some of them for a very long time before the consolidation act of 1882 was passed, and the most valuable parts of which are now embraced in the said last mentioned act. Some objection has been made to the repeal of these old acts by citizens who fear that some omission in the consolidation act may make it necessary to fall back upon the old statutes. It has been suggested, too, that some of the particular laws repealed by this act ought to stand. I am of the opinion that the matter can, without any detriment to the public interests, be postponed to another Legislature.

**S. 262. Tenure of office; and**

**A. 471. Three-headed park commission.**[20]

I have given the reasons at length for withholding my approval to these bills in the memorandum filed with the bill relating to the register of the city of New York.

**S. 421. To provide for an additional Aqueduct Commissioner.**

The object of this bill is to provide for the addition of the president of the board of fire commissioners to the aqueduct commissioners already in office.

The board as now constituted seems to have the work well in hand, and I can see no good purpose to be gained by an addition to their number.

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[20] See memorandum of June 14, above.

**A. 473. To extend the length of the pier in the North river between West Forty-first and Forty-second streets, New York city.**

The construction of the pier provided for by this bill is strongly opposed by the public authorities of the city of New York, as I think, upon very substantial grounds. It is claimed that the present pier is an illegal structure, which this bill would legalize, and that it would seriously interfere with and in a measure destroy the piers which are provided to be built at the foot of Forty-first and Forty-second streets, and that it would give special privileges to the Metropolitan Gas Company. I think care should be taken not to injuriously interfere with the general plans of the dock department, in view of the constantly increasing demands of commerce.

**A. 459. To authorize the election of additional justice of the peace in the city of Brooklyn, and to create an additional district.**

The judicial districts in Brooklyn were rearranged at the session of the Legislature preceding the last, and the necessities of the city were supposed then to be fully met. I am not satisfied that the wants of the people require the additional justice provided for, and I consider the bill an unwise interference with the districts so lately established.

**S. 436. Relative to gas-light companies in the county of Kings.**

1st. The title of this bill is to amend a general law of eighteen hundred and forty-eight 'as to the county of Kings.'

2d. The bill itself is not an amendment of any existing provision of the general law, but an entirely independent act, and a special act at that.

3d. If the title is not so misleading as to vitiate the bill, it must still be considered a special act, and in that view it contains more than one subject, to wit: Regulations for the county of Kings, and also separate and distinct regulations for the city of Brooklyn.[v]

4th. The purpose of the bill is plainly to establish a monopoly among such gas companies as already have consents from the municipal authorities.

**A. 519. To provide for and define public or legislative printing.***

This act changes entirely the mode of contracting for legislative printing, by directing that all of the different kinds of printing shall be regulated by a separate contract or specified prices. The present plan has been in force but a few years, and as I understand it, has given quite general satisfaction, and I see no good reason for changing it.

**A. 770. To allow persons whose lands were damaged by the "Chenango canal extension" to file claims for such damages, and to collect the same.**

I suppose the claims mentioned in this bill are already barred by the statute of limitations, under the Constitution,[w] which fixes the same limitation between the State and claimants as exists between private parties. If that be true, and the State is thus protected by the Constitution, no law can revive a claim which has been already thus barred.

**A. 481. To authorize the State Board of Claims to hear and determine claims of Thomas Featherstone.**

This bill authorizes the Board of Claims to 'hear, audit and determine,' certain claims against the State which on the face of the bill appear to have accrued no later than the year eighteen hundred and seventy-seven. It thus appearing that the claims are barred by limitation under the

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[v] Const. 1846, art. 3, § 16.

* See the State printing law of 1901, chap. 507, and amendments.

[w] Const. 1846, art. 7, § 14, added 1874.

Constitution,[1] the Board of Claims would be obliged to dismiss the proceedings immediately on that fact appearing.

**A. 480. To authorize the State Board of Claims to hear and determine claims of Thomas J. Lawlor.**

This bill is similar to the preceding one, except that the claims are in favor of a different party, and the same reasons for its rejection apply.

**A. 59. To amend the charter of the Safety Fund Mutual Insurance Company.**

The object of this bill is to amend the charter of a mutual insurance company formed under the general statute. The change proposed substitutes money instead of notes or obligations, which is according to the general plan. It is objected to on the ground of its being special legislation, changing the law in regard to only one corporation, and as being against the policy of the statute under which like companies are organized.

**S. 477. In relation to certain fees and compensation of the sheriff of Albany county.**

This bill allows a change in the fees and allowances of the present sheriff of Albany county.

This is clearly in violation of section eighteen of article three of the Constitution, which prohibits the passage of a private or local bill '*creating,* increasing or decreasing fees, percentage or allowances of public officers, during the term for which said officers are elected or appointed.'

**S. —. To amend the charter of the city of Albany.**

The present charter of the city of Albany provides for the designation by the common council of three official papers, which shall publish all ordinances and other matters required by law to be published.

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[1] Const. 1846, art. 7, § 14, added 1874.

The amendment proposed by this bill provides that if among the official papers thus designated, one of the great political parties shall not be represented, the common council may designate a fourth official paper, in order that such party may be represented.

I should like to approve a bill providing but for one official paper in the city of Albany. If two are deemed necessary, it should perhaps be provided that they shall be papers representing the views of each of the great parties; but any bill permitting the designation of four official papers in the city of Albany appears to me to be entirely unnecessary and a useless expenditure.

**S. 362. In relation to the Bethpage cemetery, in the town of Oyster Bay, Queens county.**

This act seems merely to authorize the trustees of this cemetery to grant plots in the cemetery for burial purposes, and to hold and keep the money derived therefrom and apply the interest to the expense of keeping the cemetery improved and in repair, and after an accumulation of a certain sum that the principal may be applied to like purposes.

With the numerous statutes in relation to cemeteries of all kinds and descriptions, it cannot be possible that a special law is necessary in order to permit the trustees of this cemetery to do the very acts for which they were chosen or elected.

No necessity for the passage of this law has been suggested.

**A. 626. Relative to the village of Newark.**

The title of this bill declares it to be an act to revise and amend a certain chapter in the Laws of eighteen hundred and sixty-four, entitled 'An act to amend the charter of the village of Newark,' and the several acts amendatory thereof. It seems to me that this title is defective, since in the body of the bill there is no reference made to any statute as being amended, but it comprises apparently an entirely new charter for the village.

This kind of legislation comes very near being an evasion of the Constitution,[y] which prohibits the Legislature from passing acts incorporating villages, and where acts of this kind are passed, I think they should be entitled to consolidate or revise charters as contained in certain statutes in their title referred to.

While on account of the defective title I have not examined this bill with the utmost care, I observe one section in it which seems objectionable. It provides that any person elected or appointed to office under this act who shall refuse to qualify within five days after notice of such election or appointment, shall forfeit and pay the sum of ten dollars for the use of the village. While this would be a very proper provision in the case of any person who voluntarily assumed the duties of an office and failed to qualify, and while I would not object to some manner of compelling a better class of citizens to accept office at the hands of their neighbors by election, it seems to me the fining a person for not accepting an office to which he may be appointed, permits those having the appointing power to subject a man to the penalty without the least consultation with him.

### A. 706. Amending the charter of the village of Phoenix, Oswego county.

The title of this bill is not unlike that in relation to the village of Newark; and inasmuch as it appears that the first election under this bill will not occur until the third Tuesday in March, eighteen hundred and eighty-five, no harm can ensue if its passage is postponed until the next Legislature.

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[y] Const. 1846, art. 3, § 18, added 1874.

**A. 458. To authorize and direct the Secretary of State to compile and publish laws relating to the poor, and to distribute the same.**

There is no appropriation made for this, and no limit given as to the amount to be expended. Besides this, the poor laws are so multitudinous, and there are so many local and special statutes relating to the subject that the compilation of these, together with the preparation of regulations and instructions provided for in the bill, would be a very extensive undertaking, and to be properly done should be put in the hands of those who are specially qualified for labor of this character.

**A. —. In relation to the claims of Thomas M. Costello and Charles M. Curtis.**

This bill authorizes the Board of Claims to hear claims of certain parties against the State, which I understand to be now barred by the limitations prescribed by the Constitution.[z] If this be so, the bill cannot benefit the claimants, inasmuch as when the fact appeared to the board that the constitutional limitation had attached, it would be their duty to at once dismiss the claims.

**S. 200. Relative to shore inspectors.**

The object of this bill is to appoint two shore inspectors to perform the duties heretofore devolving upon one such officer. The necessity of having an additional shore inspector has not been fully explained to me, and some of the provisions of the bill are so confused as to be almost unintelligible.

**A. 501. Relative to the Cohoes water supply.**

After a very full hearing, a little more than a year ago, I approved chapter four hundred and twenty-nine of the

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[z] Const. 1846, art. 7, § 14, added 1874.

Laws of eighteen hundred and eighty-three. One of the principal arguments used for its passage was that the water then furnished by the Cohoes Water Company was impure. That law contemplated the furnishing of a new supply of water, etc.

Nothing has been done under that law, and it is now proposed to repeal all of it that permits new works to be erected, and authorizes putting down new pipes which will enforce the continuation of the present supply. This purports to be a bill to amend the law of eighteen hundred and eighty-three, but there are but two sections of it which amend that law in terms. The rest is an independent act, and confusion is sure to arise, I think, between the provisions of the two acts. I think if the scheme of the act of eighteen hundred and eighty-three is to be abandoned, it should be repealed and another law substituted, or the sections of the old act should be amended in such a way that the existing law would be clear.

### A. 343. Relative to mechanics' liens.[27]

This bill repeals in distinct terms a number of mechanics' lien laws, including one specially applicable to the city of New York. I notice two features in this bill which I think objectionable enough to warrant me in declining to sign it.

1st. It gives *all parties,* having claims, four months after performance of work or furnishing of material to file a lien.

2d. It allows on proceedings to enforce the lien the same costs as in foreclosure cases. This would be quite onerous, and I think should not be allowed.

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[27] A new mechanics' lien was enacted in 1885, chapter 342. This act was sustained in Riggs v. Shannon (1891), 44 N. Y. S. R. 365; Boyd v. Stewart (1893), 30 Abb. N. C. 127; Schillinger Fireproof Cement & Asphalt Co. v. Arnott (1897), 152 N. Y. 584.

**A. 549. Amending the act allowing illegitimate children to inherit real and personal property.**

This bill would, I think, make a very radical and dangerous change in the law.

NOTE.—At the general election held on the 4th of November, 1884, Governor Cleveland was elected to the office of President of the United States. On the 6th of January, 1885, he resigned the office of Governor, and was succeeded by the Lieutenant-Governor, David B. Hill. See *post,* Vol. 8, p. 1.

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Mr. Cleveland was again elected President in 1892, for the term beginning March 4, 1893. He died June 24, 1908.

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